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St. Paul, Law's, Statutes
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Jervis's Acts,

11 & 12 VICTORIA, c. 42, 43, & 44;

RELATING TO

THE DUTIES

OF

JUSTICES OF THE PEACE

OUT OF SESSIONS,

AS TO INDICTABLE OFFENCES, CONVICTIONS AND ORDERS;

AND TO THE

PROTECTION OF JUSTICES IN THE EXECUTION

OF THEIR DUTIES;

ALSO

STAT. 12 & 13 VICT. c. 14,

FOR THE LEVYING OF POOR RATES, &c.

WITH

PRACTICAL NOTES

AND

FORMS.

THIRD EDITION.

BY

JOHN FREDERICK ARCHBOLD, ESQ.

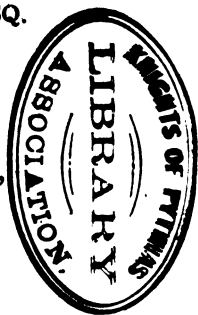
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YRABUJ GROTAT

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TO THE
THIRD EDITION.

A NEW Edition of this work being required, I have prepared it; and I trust it will be found that I have done so with great care and attention. I have given in the course of the notes all the cases which have been decided on these Acts since the last edition of the work; and I have added to them the more recent statute, the 12 & 13 Victoria, c. 14, relating to the levying of Poor rates, Highway rates, and all other rates which are levied in the same manner as Poor rates. In a note to the last edition I intimated an opinion that the second of these Acts (11 & 12 Vict. c. 43,) did not extend to the cases of levying Poor rates, Highway rates, &c. And the Legislature since seem to have been of the same opinion; and have enacted this stat. 12 & 13 Vict. c. 14, to remove all doubts upon the subject, and give a simple and certain mode of proceeding, with all the necessary forms; so that Justices have now the same facility in enforcing the payment of Poor rates, &c. by that Act, that is afforded to them in all other cases by Jervis's Acts.

And now, I think, in conclusion, I may fairly congratulate my Readers, and the Profession, the Magistracy and the Public, upon the admirable manner in which these statutes operate in practice. It is now found that what I predicted, in my Preface to the

1st edition, *post*, p. ix., has turned out to be perfectly correct, namely, that these Acts “give the “greatest facility to the Justices in the execution of “their very onerous duties, enable them to execute “them with certainty and correctness, create a uniformity of practice in this respect throughout the “kingdom, and give a fair and reasonable protection, “and consequent confidence, to justices in their administration of the law.” So far I think it is matter of congratulation, that the whole system of our criminal procedure out of Sessions has been put in the very best possible state, to ensure a perfect administration of our crown law by our justices of the peace, so far as their jurisdiction extends. It remains still for the Legislature to give us a good mode of procedure in indictable cases, and correct definitions of all offences, with their punishments,—and then our criminal law will be complete.

J. F. A.

TEMPLE, 1850.

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TO THE
SECOND EDITION.

A VERY large edition of this work has been sold since the 16th September last, and a new edition has been called for by my publisher. I have availed myself of this opportunity of adding considerably to the notes, principally for the purpose of noticing some objections raised to these Acts by a gentleman who has written upon them, and whose work is now before me. In my humble opinion, and I trust it will be the opinion of my readers also, there is no weight or validity in his objections; I think I have satisfactorily proved, in my observations on them, and which the reader will find, marked thus (S.), at the end of my other notes on each section of these Acts, that there is no ground whatever, not the slightest pretence, for any one of them. The angry, very angry, style in which he writes, compared with the groundlessness of his objections, is somewhat amusing. As to his practical notes, they are scanty,—few and far between,—and not of the very best quality. For example:—in a note on the second of these Acts, speaking of the Information and Complaint, and intending to intimate that they ought in all cases to be in writing, he says, and rightly, that unless an in-

formation be expressly required to be in writing, it need not be so taken; and this Act is silent upon the subject; also, by sect. 8, it is expressly enacted that it shall not be necessary that the complaint shall be in writing unless required to be so by the particular statute on which it shall be framed; and from these *data*, the gentleman jumps to the conclusion that "therefore it will be advisable" that both information and complaint shall be in writing. But this is not all; he gives as a reason for this advice, that the statute gives a form of complaint, whereas there is no such form in the statute or its schedule. From this specimen of his practical notes, and from his groundless criticisms, the profession and the magistracy may judge for themselves how far they can trust to this gentleman's guidance in the construction they should give to these Acts, or the manner in which they should perform those of their duties which are to be regulated by them.

There are some subjects, which have been discussed in our legal periodicals, relative principally to the applicability of the second of these Acts to certain cases within the jurisdiction of Justices of the peace. I have ventured humbly to offer my opinion on these subjects in a note at page 136, taking care to state my reasons for the opinion I entertain and express, so that my readers may judge whether or not I am correct.

It will be remarked that in the two first of these Acts, the defendant is in all cases designated by the word "person," including of course females as well as males, but is afterwards referred to by the pronoun "he" or "him,"

throughout the section. The masculine pronoun here, however, does not control the meaning of the word "person," or restrict it to the masculine gender; but the two first of these Acts must be deemed to apply to female as well as male persons indiscriminately. This is particularly provided for by stat. 7 & 8 G. 4, c. 28, s. 14; and, indeed, in this instance, would be so at common law.

In conclusion, I beg to say that I have attended carefully to this edition as it has passed through the press, in order to ensure its correctness, and to make it worthy of the extraordinary favour with which the last edition has been received by the profession, the magistracy, and the public.

J. F. A.

TEMPLE.

P R E F A C E

TO THE

FIRST EDITION.

HER Majesty's present Attorney-General has, by these Acts done more for the due administration of criminal justice throughout England, than has ever yet been done by any person, with the single exception perhaps of Sir Robert Peel. Even the statutes called Peel's Acts, although well designed, well executed, must yield the palm of real downright utility to these Acts: Peel's Acts gave with certainty the definitions of the different offences in the nature of larceny and malicious mischief; Lord Lansdowne's Acts, those relating to offences against the person; but these Acts create a whole code of practice for Justices of peace out of session, both with relation to indictable offences generally, and to summary convictions and orders, and provide for the fair and reasonable indemnity of these same Justices in the execution of their several duties. And when we consider that more than half of the criminal law of England is administered by Justices of the peace out of sessions, we may learn to estimate and appreciate the importance of these Acts, which give the greatest facility to the Justices in the execution of their very onerous duties, enable them to execute them with certainty and correctness, create a uniformity of practice in this respect throughout the kingdom, and give a fair and reasonable protection, and consequent confidence, to Justices in their administration of the law. Nothing has hitherto been attempted, which is likely to have so beneficial an effect on the administration of the criminal law of the country, as these three Acts. They

insure the administration of it in the true English spirit of fairness towards the accused, at the same time that they repress and punish the crime with certainty, and give every fair and necessary security and protection to those to whom the duty of doing this is intrusted.

The first of these Acts relates wholly to the duties of Justices of the peace out of quarter sessions, with respect to indictable offences :—the information, the summons or warrant to apprehend, the examination of the prosecutor and witnesses, the binding of them over to prosecute or give evidence, and the bailing or commitment of the accused. The first five sections treat principally of the jurisdiction of Justices of the peace out of sessions, in relation to indictable offences. Formerly they had jurisdiction of treason, felony, and misdemeanors against the peace, or tending to a breach of it, but not of misdemeanors which were not against the peace, such as perjury, &c. ; but now by this Act they have jurisdiction of all indictable offences whatsoever, whether against the peace or not. Formerly they had jurisdiction only of offences committed within their own county or other jurisdiction ; now they have jurisdiction of them, if committed any where within England or Wales :—of offences within their own county, &c., they have jurisdiction, no matter where the offender may happen to be ; and of offences committed elsewhere, they may take cognizance, if the offender be, or be supposed or suspected to be, within their jurisdiction. And where an offender is thus brought before a Justice of peace, charged with an offence committed out of the Justice's jurisdiction, the Justice takes the examination of any witnesses who may happen to be within his jurisdiction, and binds them over to give evidence at the trial ; and if their evidence be sufficient, he at once commits the offender for trial to the gaol of the county, &c. where the offence is alleged to have been committed, and sends the depositions to the clerk of the peace or other proper officer ; but if there

be no witnesses within the Justice's jurisdiction, or if the depositions of the witnesses produced be not sufficient, he then by his warrant sends the prisoner, in custody of a constable, with any depositions which may have been taken, before a Justice of the peace for the county, &c. where the offence is alleged to have been committed, who thereupon proceeds to hear witnesses, and to commit or bail, in the ordinary way. Provisions are made for enabling magistrates for two adjoining counties, ridings, or other districts, to act in one for the other, and a magistrate of a county, &c. to act for it in an adjoining city, &c.; the former provisions on this subject, which were imperfect, are here amended and re-enacted. The Act then regulates the information, the summons or warrant to bring the accused before the Justice, the mode of compelling the attendance of witnesses, the examination of the witnesses, and the statement of the accused. Upon this latter subject, it is necessary to make one or two observations. After the witnesses have been all examined in the presence of the accused, and every opportunity given to him to cross-examine them, he is then to be addressed by the Justice thus:—"Having heard the evidence, do you wish to say any thing in answer to the charge? You are not obliged to say any thing unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you on your trial." This is in the true spirit of English fairness to the accused. How strongly does it contrast with the practice in some other countries, where the unfortunate accused is examined and questioned with all the subtlety and astuteness of a cross-examination. Nor is the caution here mentioned at all new in practice in this country; most Justices were in the habit, previously to this statute, before they called upon an accused person to make answer to the charge against him, to caution him that what he should say might be given in evidence against him; but it is the first time in this, or in

any other country, that this or the like caution has been made the subject of legislative enactment. There is another essential improvement made by this statute, in the provisions respecting bail. Formerly it required two Justices to take bail in felony, and, if this were after the commitment of the prisoner, one of them must have been the Justice who signed the warrant of commitment. This often operated as a hardship on the accused ; if brought before one Justice alone, he had to be kept in custody until another Justice of the peace could be found, in order to be admitted to bail, although sureties, the most unexceptionable, might be present, and ready to enter into a recognizance for his appearance, at the time of the examination. Also, no provision was made for taking the recognizance of the sureties and the accused separately ; so that if the accused were once committed to prison, his sureties, and the committing Justice together with another Justice of the peace, must have attended at the prison, for the purpose of bailing him. But by this Act, every facility is given to the accused to procure himself to be bailed : any one Justice by whom the examinations are taken, may take bail ; or if the prisoner cannot find bail at that time, and be committed for trial, the committing Justice may at any time afterwards, and before the first day of the sitting or sessions at which the prisoner is to be tried, admit him to bail ; or if it be inconvenient for the committing Justice to attend at the prison for the purpose, if he will give a certificate, on the back of the commitment or otherwise, stating his consent to the party being bailed, and the amount of bail to be taken, any other Justice of the peace, upon production of the certificate, may take the bail ; or even where it is inconvenient for the sureties to attend at the prison, their recognizance may be taken by any Justice of the peace, upon production of the certificate here mentioned, and upon this being transmitted to the keeper of the prison, the same or any other Justice of the peace may take the recognizance of

the accused himself, and order him to be discharged. All this, too, is in the true spirit of English fairness to the accused; nothing is left undone, to afford him every facility of being bailed. But it is not in every case, even by this statute, that the accused is entitled, as of right, to be bailed; there may be cases in which it would be obviously indiscreet to admit the accused to bail; in treason a Justice of the peace cannot take bail; in all felonies, and in some misdemeanors of the worst description, a discretionary power is here given to the committing Justice to bail, or not, as he may think fit, he being the person best acquainted with the circumstances of the case and best capable of judging whether the prisoner should be bailed at all, or if bailed, what amount of bail should be required; but in all other cases of misdemeanor, the accused is entitled to be bailed, as of right, either by the examining Justice, or, after commitment, by any of the visiting Justices of the prison in which he is confined. Another improvement effected by this first Act, and the last I shall here mention, is, the enabling Justices, in the case of an adjournment of the examination, to take bail for the appearance of the accused at the resumption of the examination, instead of remanding him to prison. This, although sometimes done by Justices, previously to this Act, out of favour or kindness to the prisoner, was in strictness not authorized by law.

The second of these Acts relates wholly to the duties of justices of the peace, out of quarter sessions, with respect to convictions and orders:—the information or complaint, the summons or warrant to apprehend, the hearing, the conviction or order, and the warrant of distress or commitment. The words “information” and “complaint” are used here, as descriptive of different instruments,—the information meaning the charge made against a party for some offence alleged to have been committed by him, the complaint meaning a statement of the grounds of an application for an order of

a Justice upon the defendant for the payment of money, or for the doing of some other thing. The information is usually in writing, the complaint not; but it is provided that no objection shall be taken to any such information or complaint for any defect in form or in substance, or for any variance between it and the evidence, unless the variance appear to the Justice to be such that the defendant has been deceived or misled by it. Upon this information or complaint, a summons issues, and if that summons be disobeyed a warrant issues to apprehend the defendant; or in the case of an information for an offence, the Justice, at his discretion, instead of issuing a summons, may issue a warrant in the first instance, particularly in cases where it is thought that the defendant will abscond as soon as he learns that an information has been filed against him; or, where the defendant does not appear, if it be proved to the Justice at the hearing, either upon an information or complaint, that the defendant has been duly served with the summons, the Justice, instead of issuing a warrant for his apprehension, may proceed to hear the case *ex parte*, in his absence, in the same manner as if he were present. The mode of proceeding at the hearing, is fully detailed by the statute, in order that there may be a perfect uniformity in that respect before Justices all over the kingdom. All the other proceedings to execution,—the dismissal of the information or complaint with costs, if the Justice decide in favour of the defendant,—the conviction or order if he decide for the prosecutor or complainant,—and the warrant of distress or commitment,—are all provided for by this statute, in every possible case that can occur. The costs also form the subject of a provision in the statute, and the order for them is now always to be embodied in the conviction or order; and not only are the costs of the conviction or order thus provided for, but also the costs awarded by the court of quarter sessions upon an appeal against any such conviction or order, which may now be recovered before any

one Justice of the peace for the same county, &c., upon producing to him a certificate from the clerk of the peace that such costs have not been paid. There are many other improvements introduced into this statute, for the purpose of making it work freely and well in practice, which it is unnecessary to point out; the reader will soon perceive them, upon even a cursory perusal of the statute. The statute, however, makes no alteration in the jurisdiction of Justices of peace with respect of convictions and orders; they still retain the same jurisdiction, and the hearing is to be before one or two or more justices, as is specially required by the statute on which the information or complaint is framed in each particular case. But one Justice alone may in all cases receive the information or complaint, and one Justice alone may carry the conviction or order into execution, by issuing the necessary distress warrant or warrant of commitment for that purpose.

To these two Acts, are added forms in nearly every case which can occur in practice; and much pains and labour seem to have been bestowed upon them. Blank copies of these forms, also, and in most cases with the statement of the offence, &c. filled up, may be had of the publishers of this work. Upon the whole, with the aid of the practical notes here given to these two Acts, and of the forms, it is scarcely possible for a Justice of the peace now to err in the execution of his duties, either in respect to indictable offences, or in cases of convictions or orders.

As to the third Act, it merely does justice to the Magistrates, and gives them a fair and reasonable protection in the conscientious execution of their duties. If Justices act fairly in matters within their jurisdiction, why should they be subject to an action, simply because in some of their proceedings they have used a word too much or too little, or happen not to have worded some document with all the accuracy of a special pleader? By this statute such an action must be an

action on the case, and the declaration must allege that the act complained of was done by the Justice maliciously, and without probable cause; and such allegation must be proved at the trial. As to actions against Justices, for acts done by them in matters where they have no jurisdiction, or have exceeded their jurisdiction, the only protection afforded to them is, that the act done must be quashed, before any action is brought,—or, in other words, it must be decided whether the act was right or wrong,—before any action is brought in respect of it. But there is one clause in this statute which is worth all the rest, and is really admirable: when in a matter of doubt or difficulty, a Justice of the peace refrains from doing an act, fearing that an action may be brought against him for it, a motion may be made in the court of Queen's Bench, for a rule calling upon the opposite party and the Justice to show cause, why the Justice should not do the act; and if the opposite party do not show sufficient cause why the act should not be done, the rule will be made absolute, and the Justice will thereupon do the act; after which no action will lie against the Justice for doing such act in compliance with the rule of court. As to the other provisions, with respect to the limitation of action, the notice of action, the venue, plea, evidence, tender, nonsuit, verdict, damages, costs,—it is unnecessary to notice them; they are in general the same as before this statute, with very little variation.

J. F. A.

TEMPLE, 1848.

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JERVIS'S ACTS.

11 & 12 VICTORIA, CAP. 42.

An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with indictable Offences. [14th August, 1848.]

SECTION I. WHEREAS it would conduce much to the improvement of the administration of criminal justice within *England* and *Wales*, if the several statutes and parts of statutes relating to the duties of Her Majesty's justices of the peace therein with respect to persons charged with indictable offences were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment: be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases where a charge or complaint (A.) shall be made before any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within *England* or *Wales*, that any person has committed or is suspected to have committed any treason, felony, or indictable misdemeanor, or other indictable offence whatsoever, within the limits of the jurisdiction of such justice or justices of the peace, or that any person guilty or suspected to be guilty of having committed any such crime or offence elsewhere out of the jurisdiction of such

Post, p. 9.
For what offences a justice of the peace may grant a warrant or summons to cause a person charged therewith to be brought before him. 1 J. P. 282, 283.*

* The bills, in passing through both Houses of Parliament, had these marginal references to Archbold's "Justice of the Peace;" and they are here retained, as they may be useful to the reader.

Indictable Offences. [11 & 12 Vict.

- Post*, p. 9. justice or justices is residing or being or is suspected to reside or be within the limits of the jurisdiction of such justice or justices, then and in every such case, if the person so charged or complained against shall not then be in custody, it shall be lawful for such justice or justices of the peace to issue his or their warrant (B.) to apprehend such person, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to answer to such charge or complaint, and to be further dealt with according to law : provided always, that in all cases it shall be lawful for such justice or justices to whom such charge or complaint shall be preferred, if he or they shall so think fit, instead of issuing in the first instance his or their warrant to apprehend the person so charged or complained against, to issue his or their summons (C.) directed to such person, requiring him to appear before the said justice or justices at a time and place to be therein mentioned, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as may then be there ; and if after being served with such summons in manner hereinafter mentioned he shall fail to appear at such time and place, in obedience to such summons, then and in every such case the said justice or justices, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, may issue his or their warrant (D.) to apprehend such person so charged or complained against, and cause such person to be brought before him or them, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charge or complaint, and to be further dealt with according to law : provided nevertheless, that nothing herein contained shall prevent any justice or justices of the peace from issuing the warrant hereinbefore first mentioned, at any time before or after the time mentioned in such summons for the appearance of the said accused party.
- In what cases the party may be summoned.*
1 J. P. 282.
- Post*, p. 10.
- And if the summons be not obeyed, a warrant may issue.
1 J. P. 283.
- Post*, p. 10.
- Proviso.*

NOTES.

This section gives great additional jurisdiction to justices of the peace, both as to the offences of which they may take cognizance, and with respect to the places in which the offences may have been committed. We shall consider this matter under the following heads:

As to what offences.] By this section a justice of the peace may issue his warrant or summons against a person accused of any indictable offence,—treason, felony, or misdemeanor,—and whether the latter be against the peace or not.

The jurisdiction of justices of the peace is ministerial or judicial. The judicial functions of justices consist of the trials of offenders at general or quarter sessions, and the hearing and adjudicating upon informations and complaints out of such sessions; their ministerial functions consist of receiving informations or complaints, for indictable offences, and also for offences or matters determinable in a summary way,—causing the party charged to appear and answer, either by summons or by warrant, and taking bail, &c.—and, in the case of summary convictions or orders, causing such conviction or order to be executed, by warrant of distress or of commitment. With respect to convictions and orders out of sessions, the jurisdiction, ministerial and judicial, is given wholly by statute; but with respect to indictable offences, it is given by the commission of the peace, and by a previous statute, namely, stat. 34 Ed. 3, c. 1, since explained and amended by other statutes. By the commission of the peace, which is now nearly the same as it was in the reign of Queen Elizabeth, the duties of justices out of sessions are defined thus: “Know ye, that we have assigned you jointly and severally, and every one of you, our justices, to keep our peace in our county of —, and to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and singular their articles, in our said county, (as well within liberties as without), according to the force, form, and effect of the same, and to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done, according to the form of those ordinances and statutes.” All treasons and felonies were deemed to be offences against the peace, within the meaning of this commission; but with respect to misdemeanors it was otherwise, and they were deemed to be within the commission, only when they were actually against the peace, such as battery or false imprisonment, &c. or when they tended to a breach of the peace, as in the case of libel. *Butt v. Conant*, 1 *Brod. & B.* 548. But perjury was not

Indictable Offences. [11 & 12 Vict.

deemed to be within the commission; and therefore where a justice of the peace committed a person, charged with perjury, for trial, Wightman, J. upon application, granted a *habeas corpus* to bring him up to be discharged, holding that justices of the peace had no jurisdiction to commit for perjury at common law. *R. v. Bartlett*, 1 Dowl. & L. 95, 12 Law Jo. 127, m. So, obtaining goods under false pretences, seems to come within the same exception, although in practice justices were constantly in the habit of committing for that offence. But now, as above mentioned, justices of the peace are authorized by this section to commit for all indictable offences, without exception.

As to the place where the offence is committed.] By this section, justices of the peace have authority to issue their warrant to apprehend, and to commit for trial, any person charged with having committed an indictable offence within their jurisdiction, no matter where such person shall reside or be,—or out of their jurisdiction, if the party charged be, or be supposed or suspected to be, within it. And in either case, if it shall happen that the party, against whom such warrant shall have issued, shall not be found within the county or other district to which the commission of the justice is limited, the warrant may be backed, as hereinafter directed in sect. 10, &c. so that it may be executed in some other district.

Previously to this Act, justices of the peace had authority to issue their warrant to apprehend any person, charged with having committed, within their jurisdiction, any treason, or felony, or any misdemeanor against the peace or having a tendency to a breach of it; 1 Hale, 579; but they had no authority as to offences committed out of their jurisdiction. The magistrate could interfere only in cases of felony, or of a dangerous wound given, and then only to the extent of ordering a constable or other person to apprehend the party suspected, if found within his jurisdiction, and directing him to be taken before some justice of the peace for the county or other district where the felony was committed or wound given. And this was seemingly done upon the principle that a constable, or even a private person, may, without warrant, arrest any person who has committed a felony, or has dangerously wounded another. See 1 Arch. J. P. 128, 130. But now a justice of the peace, by this section, may issue his warrant against any person within his jurisdiction, or supposed or suspected to be within it, who is charged with having committed an indictable offence within any county or other district in England or Wales. As to the mode of proceeding in such a case, after the party charged has been apprehended, see sect. 21, *post*.

With reference to the words "suspected to be guilty" in the beginning of this section, it is objected (S.), that it is difficult

to understand the legal value of the word "suspected." Formerly, I believe, it was not so difficult; for we find the warrants to apprehend, and even the warrants of commitment, in olden time, and up to a very recent period, describing the party as being charged on suspicion of having done so and so; and perhaps rightly, for it cannot very well be stated that he committed the crime until he is actually found guilty of it. But in an Act of Parliament, the word "suspected" is deemed to have reference to those cases where the party has not been actually seen in the act of committing the offence, but his guilt is to be made out by circumstantial evidence. Hence the words in this section,—where a charge is made "that any person has committed or is suspected to have committed" any treason, felony, &c. If it were otherwise, it would seem as if it were intended to confine the jurisdiction of justices to cases where there was positive and direct evidence of the party's guilt.

FORMS.

(A.)

Information and Complaint for an indictable Offence.

The information and complaint of C. D. of —, to wit. } [yeoman], taken this — day of —, in the year of our Lord 185—, before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, who saith that [&c. stating the offence].

Sworn before [me], the day and year first above-mentioned, at —. J. S.

(B.)

Warrant to apprehend a Person charged with an indictable Offence.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas A. B. of —, [labourer], hath this day been charged upon oath before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of —, for that he, on — at —, did [&c. stating shortly the offence]: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before [me], or some other of her Majesty's justices of the peace in and for the said [county], to answer unto the said charge, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L. S.)

(C.)

*Summons to a Person charged with an indictable Offence.**To A. B. of —, [labourer].*

Whereas you have this day been charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that you, on — at —, [&c. stating shortly the offence]: These are therefore to command you, in Her Majesty's name, to be and appear before me on — at — o'clock in the forenoon at —, or before such other justice or justices of the peace for the same [county] as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the county aforesaid.

J. S. (L. S.)

(D.)

Warrant where the Summons is disobeyed.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas on the — last past A. B. of —, [labourer,] was charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c. as in the summons]: And whereas [I] then issued [my] summons to the said A. B. commanding him, in her Majesty's name, to be and appear before [me] on — at — o'clock in the forenoon at —, or before such other justice or justices of the peace for the same [county] as might then be there, to answer to the said charge, and to be further dealt with according to law: And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before me, or some other of her Majesty's justices of the peace in and for the said [county], to answer to the said charge, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L. S.)

Warrant to
apprehend
for offences

II. And be it enacted, that in all cases of indictable crimes or offences of any kind or nature whatsoever

committed on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of *England* have or claim to have jurisdiction, and in all cases of crimes or offences committed on land beyond the seas, for which an indictment may legally be preferred in any place within *England* or *Wales*, it shall be lawful for any one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within *England* or *Wales* in which any person charged with having committed or with being suspected to have committed any such crime or offence shall reside or be, or shall be supposed or suspected to reside or be, to issue his or their warrant (E.) to apprehend the person so charged, and to cause him to be brought before him or them, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the said charges, and to be further dealt with according to law.

committed
on the high
seas or
abroad.
1 J. P. 10.
287.

Post, p. 13.

NOTES.

For offences at sea.] The Admiralty have exclusive jurisdiction of all indictable crimes and offences committed on the high seas, or within the harbours, creeks, and havens of foreign countries. But within the harbours, creeks, and havens of this country, the courts of common law, and not the Admiralty, have jurisdiction: as for instance, if an imaginary line were drawn across the mouth of such creek, &c. from one point of land to the other,—the common law would have jurisdiction of all offences committed within such line; the Admiralty, of all offences committed without it. As to the sea-shore, below low water mark, the Admiralty have exclusive jurisdiction; above high water mark, the courts of common law have exclusive jurisdiction: and between high and low water mark, the courts of common law and the Admiralty have alternate jurisdiction,—the courts of common law have jurisdiction of all offences committed on the strand when the tide is out,—the Admiralty, jurisdiction of offences committed on the water when the tide is in. 1 *Arch. J. P.* 10. But by stat. 3 & 4 Will. 4, c. 53, s. 77, offences committed on the high seas against any Act relating to the customs, shall, for the purpose of prosecution, be deemed to have been committed on the place on land in the united kingdom into which the offender shall be carried, or in which he shall be found.

As to the offence of piracy at common law or by statute, see 2 *Arch. J. P.* 381; and as to other offences committed within the jurisdiction of the Admiralty, see 1 *Arch. J. P.* 12. And by stat. 7 & 8 Geo. 4, c. 28, s. 12, all offences prosecuted in the high court of Admiralty of England, shall, upon every first and subsequent conviction, be subject to the same punishments, whether of death or otherwise, as if such offences had been committed upon the land.

The warrant to apprehend the offender in these cases may be issued by any justice of the peace for the county or other district in which the party charged shall "reside or be, or shall be supposed or suspected to reside or be,"—which is the same practice, as was observed under stat. 7 Geo. 4, c. 38, previously to this statute. And such justice or justices, if he or they shall see cause to commit such person to take his trial for such offence, "shall commit him to the same prison, to which he would have been committed to take his trial at the next court of oyer and terminer and general gaol delivery, if the offence had been committed on land within the jurisdiction of the same justice or justices, and shall have authority to bind by recognizance all persons, who shall know or declare any thing material touching the said offence, to appear at the next court of oyer and terminer and general gaol delivery, then and there to prosecute or give evidence against the party accused, and shall return all such informations and recognizances to the proper officer of the court in which the trial is to be, at or before the opening of the court. 7 & 8 Vict. c. 2, s. 3. See as to the form of the warrant, *infra*, (E.) If the party cannot be found within the jurisdiction, the warrant may be backed, so as to be executed within another district, as directed *post*, sect. 11, &c.

For offences committed abroad.] By stat. 9 Geo. 4, c. 31, s. 7, "if any of his Majesty's subjects shall be charged in England with any murder or manslaughter, or with being accessory before the fact to any murder, or after the fact to any murder or manslaughter, the same being respectively committed on land out of the united kingdom, whether within the King's dominions or without," a commission of oyer and terminer under the great seal shall issue, directed to such person, and into such county or place, as shall be appointed by the lord chancellor, for the speedy trial of such offender; and all such offences shall be inquired of, heard and determined in the same manner as if they had been actually committed in the said county or place.

The warrant to apprehend the offender may be issued by any justice of the peace for the county or other district in which the party charged shall "reside or be, or shall be supposed or suspected to reside or be;" *ante*, p. 11; and such justice shall thereupon proceed therein, as if the offence had

been committed within the limits of his ordinary jurisdiction, 9 Geo. 4, c. 31, s. 7,—that is to say, he shall commit him to the same prison to which he would have been committed to take his trial at the next court of oyer and terminer and gaol delivery, if the offence had been committed on land within the jurisdiction of the committing justice, or he shall be bailed or discharged, as in ordinary cases, according to circumstances. See as to the form of the warrant, *infra*, (E.) If the party cannot be found within the jurisdiction of the justice granting the warrant, the warrant in that case may be backed, as directed *post*, sect. 11, &c. so that it may be executed within another district.

It is seemingly objected (S.) to this section, that it requires the justice in all cases to issue his warrant, and does not give any discretion to issue a summons. This is a mistake: the first seven sections merely define the jurisdiction of justices of the peace with relation to indictable offences; and this section merely gives jurisdiction of offences committed at sea, or on land beyond the sea, so far as relates to the preliminary proceedings, to justices within whose district the offender may happen to be, or be suspected to be, at the time the charge is made against him. The 8th section relates to the information; the 9th to the 15th sections, to the summons or warrant to cause the party to appear and answer to it; and the rest of the statute, to the subsequent proceedings to the commitment or bail exclusively. And the 9th section, as to the summons, will be found to relate to all indictable offences, whether committed here, or at sea, or abroad. But supposing it were otherwise, would it be any thing very strange for a justice of the peace to issue his warrant, in the first instance, for offences committed at sea; if he did not, it is not very probable that the seaman, or other person charged, would pay much attention to his summons, or wait for a warrant. And as to offences committed beyond sea, they being serious offences, namely, murder or manslaughter, it is not very likely that justices would issue a summons against the offender.

FORMS.

(E.)

Warrant to apprehend a Person charged with an indictable Offence committed on the High Seas or abroad.

For offences committed on the high seas, the warrant may be the same as in ordinary cases, but describing the offence to have been committed "*on the high seas, out of the body of any county of this realm, and within the jurisdiction of the Admiralty of England.*"

For offences committed abroad, for which the parties may be indicted in this country, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "*on land out of the united kingdom, to wit, at —, in the kingdom of —,*" or "*at —, in the East Indies,*" or "*at —, in the island of —, in the West Indies,*" or as the case may be.

Warrant to apprehend a party against whom an indictment is found.

III. And be it enacted, that where any indictment shall be found by the grand jury in any court of oyer and terminer or general gaol delivery, or in any court of general or quarter sessions of the peace, against any person who shall then be at large, and whether such person shall have been bound by any recognizance to appear to answer to the same or not, the person who shall act as clerk of the indictments at such court of oyer and terminer or gaol delivery, or as clerk of the peace at such sessions, at which the said indictment shall be found, shall at any time afterwards, after the end of the sessions of oyer and terminer or gaol delivery or sessions of the peace at which such indictment shall have been found, upon application of the prosecutor, or of any person on his behalf, and on payment of a fee of one shilling, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.) of such indictment having been found; and upon production of such certificate to any justice or justices of the peace for any county, riding, division, liberty, city, borough, or place in which the offence shall in such indictment be alleged to have been committed, or in which the person indicted in and by such indictment shall reside or be, or be supposed or suspected to reside or be, it shall be lawful for such justice or justices, and he and they are hereby required, to issue his or their warrant (G.) to apprehend such person so indicted, and to cause him to be brought before such justice or justices, or any other justice or justices for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law, and afterwards, if such person be thereupon apprehended and brought before any such justice or justices,

Post, p. 17.

Post, p. 17.

such justice or justices, upon its being proved upon oath or affirmation before him or them that the person so apprehended is the same person who is charged and named in such indictment, shall, without further inquiry or examination, commit (H.) him for trial, or admit him to bail, in manner hereinafter mentioned; or if such person so indicted shall be confined in any gaol or prison for any other offence than that charged in the said indictment, at the time of such application, and production of the said certificate to such justice or justices as aforesaid, it shall be lawful for such justice or justices and he and they are hereby required, upon it being proved before him or them upon oath or affirmation that the person so indicted and the person so confined in prison are one and the same person, to issue his or their warrant (I.) directed to the gaoler or keeper of the gaol or prison in which the person so indicted shall then be confined as aforesaid, commanding him to detain such person in his custody until by her Majesty's writ of habeas corpus he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of his custody by due course of law.

Post, p. 18.

How, if he be already in custody for some other offence.

Post, p. 18.

NOTE.

A practice very similar to this prevailed previously to this statute, not only without authority, but seemingly in contravention of the provisions of stat. 7 Geo. 4, c. 64, ss. 2, 3, by which it was enacted that justices of the peace, before they should admit to bail, or commit to prison, any person arrested for felony or misdemeanor, or on suspicion of the same, should take the examination of such person, and the information of those who knew the facts and circumstances of the case, and should put the same into writing, and transmit the same to the officer of the court in which the offender was to be tried;—which was in fact never done. But the practice was found useful, and it was deemed advisable in this statute to legalize it. And now, upon obtaining from the proper officer a certificate of the indictment being found, a warrant may be obtained for the apprehension of the defendant, not only in cases where the prosecutor has omitted to obtain a bench warrant during the session at which the indictment was found, but also, if necessary, in cases where a bench warrant has issued; for it

may happen that whilst a bench warrant is in possession of a constable in another county, or in a distant part of the same county, there may be an opportunity of apprehending the defendant in another part of the county or in another county. It may be objected to this practice, that it deprives a defendant of all knowledge of what has been sworn against him, and that he cannot therefore be so well prepared with his defence, as if the witnesses against him had been examined in his presence, and he had an opportunity of getting a copy of their depositions. But the same objection would apply equally to a bench warrant, or to the old common law process upon an indictment by writs of *venire facias* and *capias*.

By this section also it is provided, that where a person, against whom an indictment is found, is already in custody for another offence, a justice of the peace, on application, and on production of a certificate of the indictment being found, may issue a warrant of detention directed to the gaoler in whose custody he is, ordering him to detain the prisoner, until he shall be removed for the purpose of his trial upon the indictment, or until otherwise discharged by due course of law. This is new in practice. Formerly it was usual in such a case, to issue a warrant to apprehend the prisoner, and either to lodge that with the gaoler, (which was obviously irregular, and in strictness ineffectual,) or to give it to a constable, and let him watch his opportunity to arrest the defendant, immediately upon his being discharged from his previous imprisonment. But the warrant of detention given by this section, is a great improvement upon the old practice.

In cases where a mere charge is made against a prisoner, but no indictment has been found, it was not thought necessary that a warrant of detention should issue. In such cases, therefore, a warrant to apprehend, if granted, must remain in the hands of the constable, and he must ascertain the time of the prisoner's discharge, and take that opportunity of executing the warrant. Or, if the charge be very serious, there is no objection to a justice of the peace attending at the prison, there taking the depositions in the presence of the prisoner, and making out his warrant of commitment, as in ordinary cases; and upon that being delivered to a constable present, he may formally execute it, and then hand it over to the gaoler.

It is objected (S.), that where an indictment is found at the assizes, this section ought to have provided that the certificate here mentioned should be granted by the clerk of assize or clerk of arraigns, and not by the clerk of the indictments, who (it is alleged) never has possession of the indictment after it is presented to the grand jury. This assertion, being made positively and without qualification whatever, made me doubt my knowledge of the practice upon the subject; and I accordingly addressed a letter to the clerk of the indictments of

the northern circuit, begging of him to inform me in whose custody those indictments found at the assizes, but upon which the parties are not then tried, remain; and I received from him the following answer:—

“York, 7th Oct. 1848.

“Dear Sir,—The indictments found at the different assizes on the northern circuit, remain with me until tried, unless removed by certiorari; and if found in any of the northern counties, are taken with me on the circuit. Until tried, they are called *extras*. I am, dear sir,” &c. &c.

So that it seems that S. is here again mistaken; and if he were to apply to the clerk of assize or clerk of arraigns for the certificate here mentioned, he would be referred to the clerk of the indictments.

Another objection (S.) to this clause is, that this certificate cannot be granted until after the assizes or sessions. But during the assizes or sessions, the court may grant a bench warrant, upon application; and it was thought right that justices out of sessions should not interfere with the discretion which the judge or bench may exercise in this respect.

FORMS.

(F.)

Certificate of Indictment being found.

I hereby certify, that at [a court of oyer and terminer and general gaol delivery, or a court of general quarter sessions of the peace,] holden in and for the [county] of —, at —, in the said [county], on —, a bill of indictment was found by the grand jury against A. B. therein described as A. B. late of —, [labourer], for that he [&c. stating shortly the offence], and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this — day of —, 185 .

J. D.

Clerk of the indictments on the — circuit,

or

Clerk of the peace of and for the said [county].

(G.)

Warrant to apprehend a person indicted.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas it hath been duly certified by J. D. clerk of the indictments on the — circuit [or clerk of the peace of and

for the [county] of — [that, &c. stating the certificate] :
These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before [me], or some other justice or justices of the peace in and for the said [county], to be dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord — at —, in the [county] aforesaid.
 J. S. (L. S.)

(H.)

Warrant of Commitment of a Person indicted.

To the constable of —, and to the keeper of the [common gaol, or house of correction,] at —, in the said [county] of —.

Whereas by [my] warrant under my hand and seal, dated the — day of —, after reciting that it had been certified by J. D. [&c. as in the certificate], [I] commanded the constable of — and all other peace officers of the said county, in her Majesty's name, forthwith to apprehend the said A. B. and to bring him before [me], the undersigned, [one] of her Majesty's justices of the peace in and for the said [county], or before some other justice or justices of the peace in and for the said [county], to be dealt with according to law : And whereas the said A. B. hath been apprehended under and by virtue of the said warrant, and being now brought before [me], it is hereupon duly proved to [me] upon oath that the said A. B. is the same person who is named and charged in and by the said indictment : These are therefore to command you the said constable, in her Majesty's name, forthwith to take and safely convey the said A. B. to the said [house of correction] at —, in the said [county], and there to deliver him to the keeper thereof, together with this precept ; and I hereby command you the said keeper to receive the said A. B. into your custody in the said house of correction, and him there safely to keep until he shall be thence delivered by due course of law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.
 J. S. (L. S.)

(I.)

Warrant to detain a Person indicted, who is already in Custody for another Offence.

To the keeper of the [common gaol, or house of correction,] at —, in the said [county] of —.

Whereas it hath been duly certified by J. D. clerk of the indictments on the — circuit [or clerk of the peace of and

for the county of —; that [&c. stating the certificate]: And whereas [I am] informed that the said A. B. is in your custody in the said [common gaol] at — aforesaid, charged with some offence or other matter; and it being now duly proved upon oath before [me] that the said A. B. so indicted as aforesaid, and the said A. B. in your custody as aforesaid, are one and the same person: These are therefore to command you, in her Majesty's name, to detain the said A. B. in your custody in the [common gaol] aforesaid, until by her Majesty's writ of habeas corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L. S.)

IV. And be it enacted, that it shall be lawful for any justice or justices of the peace to grant or issue any warrant as aforesaid, or any search warrant, on a Sunday as well as on any other day. Warrant may be issued on a Sunday.

NOTE.

It was very doubtful, before this statute, whether a warrant could be issued on a Sunday. A writ cannot issue on a Sunday; and if it bear date on a Sunday, it is wholly void. *Hanson v. Shackleton*, 4 Dowl. 48. A warrant, however, may be executed on a Sunday, if it be to apprehend for treason, felony, or a breach of the peace; see *stat. 21 C. 2, c. 7, s. 6*; and the statute is so liberally construed, that the words "breach of the peace" have been holden to include all offences which are impliedly against the peace; it has been holden that even a warrant to apprehend a man, that he might find sureties for his good behaviour, might be executed on a Sunday, within the meaning of this statute of Charles. *Johnson v. Colston*, T. Raym. 250. But a warrant to apprehend for non-payment of a penalty under a conviction, or for non-payment of money under a justice's order, cannot be executed on a Sunday, for it is in the nature of an execution in a civil action, and is clearly not a warrant for a "breach of the peace" within the statute. See *R. v. Myers*, 1 T. R. 265. 1 Arch. J. P. 131. But now, a warrant may not only be executed, but may be issued on a Sunday; there may be cases, where the instant pursuit of an offender on a Sunday may be of great importance, and when it may be necessary, or at least advisable, that the constable should be armed with a warrant for the purpose.

It is objected (S.) to this section, that it does not provide that a warrant granted on a Sunday may be executed on a Sunday. "Oddly enough," (as the gentleman himself says), he seems to forget that this statute was framed for the purpose of defining the duties of justices only, and not those of constables. The duty of a constable, as to apprehending a party under a warrant on a Sunday, is already sufficiently defined and provided for by statute 21 Car. 2, c. 7, s. 6, above mentioned, and the cases decided upon it.

Justices for adjoining counties, boroughs, &c. may act in the one for the other. 2 J. P. 31.

V. And be it enacted, that in cases where a justice of the peace for any county, riding, division, liberty, city, borough, or place, shall be also justice of the peace for a county, riding, division, liberty, city, borough, or place next adjoining thereto or surrounded thereby, it shall and may be lawful for such justice of the peace to act as such justice for the one county, riding, division, liberty, city, borough, or other place, whilst he is residing or happens to be in the other such county, riding, division, liberty, city, borough, or other place, in all matters and things hereinbefore or hereafter in this Act mentioned; and that all such acts of such justice, and the acts of any constable or other officer in obedience thereto, shall be as valid, good, and effectual in the law to all intents and purposes, as if such justice at the time he shall so act as aforesaid were in the county, riding, division, liberty, city, borough, or other place for which he shall so act; and all constables and other officers for the county, riding, division, liberty, city, borough, or place for which such justice shall so act as aforesaid, are hereby authorized and required to obey the warrants, orders, directions, act or acts of such justice which in that behalf shall be granted, given, or done, and to do and perform their several offices and duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty; and any such constable or other peace officer, or any other person apprehending or taking into custody any person offending against law, and whom he lawfully may and ought to apprehend or take into custody, by virtue of his office or otherwise, in any such county, riding, division, liberty,

Constables, &c. apprehending offenders in one such county, &c. may take them before such justice

city, borough, or place, may lawfully take and convey such person so apprehended and taken as aforesaid to and before any such justice of the peace for such county, riding, division, liberty, city, borough, or place, whilst such justice shall be in such adjoining county, riding, division, liberty, city, borough, or place as aforesaid; and the said constables and other peace officers, and all such other persons as aforesaid, are hereby authorized and required, in all such cases, so to act in all things as if the said justice of the peace were within the said county, riding, division, liberty, city, borough, or place for which he shall so act.

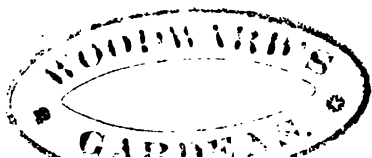
in the adjoining county, &c. if he be a justice of both.

NOTE.

The law upon this subject, before this statute, was imperfect. By stat. 28 Geo. 3, c. 49, s. 1, where a justice of the peace was a justice for two or more adjoining "counties," he might act in one for the other. But this was, by the terms of the Act, confined to counties, and did not extend to ridings or divisions of counties, liberties, cities, boroughs, or other places having a separate commission of the peace; so that a magistrate for a riding in Yorkshire, who was also a justice of the peace for an adjoining county, could not in strictness act in one for the other; and the same as to cities, boroughs, &c. But by this section, the defect is fully remedied; and every person who is a justice of the peace for two districts adjoining to each other, or the one surrounded by the other,—no matter whether such districts respectively be counties, ridings (meaning the ridings of the county of York), divisions (meaning the divisions of the county of Lincoln), liberties, cities, boroughs, or any other place having a separate commission of the peace,—may act in one of these districts for the other.

VI. And be it enacted, that it shall be lawful for any justice or justices of the peace acting for any county at large, or for any riding or division of such county, to act as such at any place within any city, town, or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, and situated within, surrounded by, or adjoining to any such county, riding, or division respectively; and that all and every such act and acts, matters and things, to be so done by such justice or justices within such city, town, or precinct, as justice or justices

Justices for a county, &c. may act for it in an adjoining city or place of exclusive jurisdiction. 2 J. P. 31.



Proviso.

for such county, riding, or division respectively, shall be as valid and effectual in law, as if the same had been done within such county, riding, or division respectively, to all intents and purposes whatsoever: provided always, that nothing in this Act contained shall extend to give power to the justices of the peace for any county, riding, or division, not being also justices for such city, town, or other precinct, or not having authority as justices of the peace therein, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town, or precinct, in any manner whatsoever.

NOTE.

The law upon this subject, also, was imperfect, before the passing of this statute. By stat. 28 Geo. 3, c. 49, s. 4, a justice of the peace acting for a county at large, might act as such at any place within a city, town or other precinct, being a county of itself, and situated within, surrounded by, or adjoining to any such county at large. This being confined to cities, towns and precincts which were counties of themselves, it was thought necessary afterwards, by stat 1 & 2 Geo. 4, c. 63, to enact, that any justice of the peace acting for any county at large, or for any riding or division of a county in which there are several and distinct commissions of the peace, might act as a justice for such county, riding or division, in sessions or otherwise, at any place within any city, town or other precinct, having exclusive jurisdiction, but not being a county of itself, and situated within, surrounded by, or adjoining to, any such county, riding or division. So that a magistrate for a county might act for it in any city, town or place having exclusive jurisdiction, whether such city, town or place were a county of itself or not; but a magistrate for a riding or division of a county could not act for it in such city, town or place, if such city, town or place were a county of itself. This was evidently not intended; and therefore in the present section the defect is remedied, by enabling justices for any county, riding or division, to act for it in any city, town or other precinct within it, or adjoining to it, having exclusive jurisdiction, whether such city, &c. be a county of itself or not.

The proviso at the end of this section, is the same as one contained in the statute above-mentioned, 28 Geo. 3, c. 49, s. 4, and 1 & 2 Geo. 4, c. 63.

VII. And whereas doubts have arisen whether the powers given to justices by an Act passed in the session of parliament held in the second and third years of the reign of her present Majesty, intituled "An Act for the better administration of justice in detached parts of counties," are applicable to cases of summary jurisdiction and to acts merely ministerial: be it hereby declared and enacted, that all the acts of any justice or justices, and of any constable or officer in obedience thereto, shall be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justice or justices acts or act, as if the same were to all intents and purposes part of the said county; and all constables and other officers of such detached part, are hereby required to obey the warrants, orders, and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty.

Authority of
justices in
detached
parts of
counties.

NOTE.

This section was introduced in the House of Lords. The stat. 2 & 3 Vict. c. 82, on which the doubt above-mentioned has arisen, enacts (s. 1) that it shall be lawful for any justice or justices of the peace, acting for any county, to act as a justice or justices of the peace in all things whatsoever concerning or in anywise relating to any detached part of any other county, which is surrounded in whole or in part by the county for which such justice or justices acts or act; and that all acts of such justice or justices of the peace, and of any constable or other officer in obedience thereto, shall be as good, and all offenders in such detached part may be committed for trial, tried, convicted, and sentenced, and judgment and execution may be had upon them, in like manner as if such detached part were to all intents and purposes part of the county for which such justice or justices acts or act; and all constables and other officers of such detached part are hereby required to obey the warrants, orders, and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty. The doubt

seemingly arising upon this Act was, that it extended only to indictable offences, and did not extend generally to the acts and duties of magistrates, such as their summary jurisdiction, and their acts which are merely ministerial.

There is another and subsequent Act, not mentioned here, namely, stat. 7 & 8 Vict. c. 61, which, after reciting that there exist in England and Wales parts of counties detached from the main body of the county, and that delay and hinderance to the administration of justice ensue, and inconvenience in other respects, and that it was desirable to remedy the said evil,—enacts, by sect. 1, that from and after the 20th October then next, every part of any county in England or Wales, which is detached from the main body of such county, shall be considered, for all purposes, as forming part of that county of which it is considered a part for the purposes of the election of members to serve in parliament as knights of the shire, under the provisions of stat. 2 & 3 W. 4, c. 64. The doubt here is as to the meaning of the word “detached”; if it mean a part of a county, wholly detached and separated from the county to which it actually belongs, away and apart from it altogether, and surrounded by some other county or counties, such as the district of Islandshire, including the Farne islands and Monkhouse, which is part of the county of Durham, but is locally situated in Northumberland,—such as Bedlingtonshire, which is also part of Durham, but situate in Northumberland,—such also as Craikshire, part of Durham, which is situate in the North Riding of the county of York,—and very many other places which might be mentioned,—then it would appear that there was no occasion for this section, the stat. 7 & 8 Vict. c. 61, s. 1, having already provided for the doubt recited in it. Now, on consulting the 2 & 3 W. 4, c. 64, s. 26, above referred to, we find it enacted, that the isolated parts of counties in England and Wales, described in schedule M, shall be considered as forming parts of the counties respectively mentioned in the fourth column of schedule M; “and that every part of any county in England and Wales, which is *detached* from the main body of such county, *but for which no special provision is hereby made*,” shall be considered as forming part of that county, “whereby such detached part shall be *surrounded*,” or, if surrounded by two or more counties, then as forming part of that county with which it has the longest boundary. Therefore it appears that, construing the 7 & 8 Vict. c. 61, s. 1, and 2 & 3 W. 4, c. 64, s. 26, as one Act, the stat. 7 & 8 Vict. c. 61, s. 1, really provided for the doubt expressed in the recital of the above section. However there can be no harm in the above enactment; it merely renders that which was certain doubly sure. The clause was introduced in the Lords by a noble peer of great talent, and a most active member of that house, who is

well versed in everything relating to the summary jurisdiction of justices of the peace ; but still it is likely that the above stat. 7 & 8 Vict. c. 61 may have escaped his notice or recollection.

VIII. And be it enacted, that in all cases where a charge or complaint for any indictable offence shall be made before such justice or justices as aforesaid, if it be intended to issue a warrant in the first instance against the party or parties so charged, an information and complaint thereof (A.) in writing, on the oath or affirmation of the informant or of some witness or witnesses in that behalf, shall be laid before such justice or justices : provided always, that in all cases where it is intended to issue a summons instead of a warrant in the first instance, it shall not be necessary that such information and complaint shall be in writing, or be sworn to or affirmed in manner aforesaid, but in every such case such information and complaint may be by parol merely, and without any oath or affirmation whatsoever to support or substantiate the same : provided also, that no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examination of the witnesses in that behalf, as hereinafter mentioned.

Information.
1 J. P. 281.

Ante, p. 9.

Proviso.

Proviso.

NOTE.

Before this statute, in all cases where a warrant was granted in the first instance, it was deemed prudent to require a previous information in writing, upon oath ; and indeed the court have intimated that it ought to be so. *R. v. Fearshire*, 1 Leach, C. C. 202, *Stephens v. Clark*, 1 Car. & M. 509. But there was no statute which expressly required it. To remove all doubt upon the subject, therefore, it was thought right here, by express enactment, to require that the information shall be in writing, and on oath or affirmation, in all cases where a warrant issues in the first instance ; in all other cases the information may be verbal, and without oath.

It is provided here, that no objection shall be taken or allowed to the information, for any defect in substance or in form, or for any variance between it and the evidence. The information, in the case of indictable offences, is merely for the purpose of enabling the justice to judge whether he should interfere or not, and of guiding his discretion as to whether he should issue a summons or warrant in the first instance. The defendant knows nothing of it; and a variance between it and the evidence, therefore, cannot be material to him. For this reason, it has been thought advisable to prevent objections being made to the information, as they could be of no benefit to the accused, and might very much impede the proceedings before the justice.

FORM.

(A.)

*Information and Complaint for an indictable Offence.*See this form, *ante*, p. 9.

Summons.
1 J. P. 282.

Ante, p. 10.

How served.
1 J. P. 282,
283.

IX. And be it enacted, that upon such information and complaint being so laid as aforesaid, the justice or justices receiving the same may, if he or they shall think fit, issue his or their summons or warrant respectively as hereinbefore is directed, to cause the person charged as aforesaid to be and appear before him or them, or any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to be dealt with according to law; and every such summons (C.) shall be directed to the party so charged in and by such information, and shall state shortly the matter of such information, and shall require the party to whom it is so directed to be and appear at a certain time and place therein mentioned before the justice who shall issue such summons, or before such other justice or justices of the peace of the same county, riding, division, liberty, city, borough, or place as may then be there, to answer to the said charge, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer upon the person to whom it is so directed, by delivering the same to the party personally, or if he

cannot conveniently be met with, then by leaving the same with some person for him at his last or most usual place of abode; and the constable or other peace officer, who shall have served the same in manner aforesaid, shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of such summons; and if the person so served shall not be and appear before the justice or justices at the time and place mentioned in such summons, in obedience to the same, then it shall be lawful for such justice or justices to issue his or their warrant (D.) for apprehending the party so summoned, and bringing him before such justice or justices, or some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer the charge in the said information and complaint mentioned, and to be further dealt with according to law: provided always, If party summoned do not attend, a warrant to issue. 1 J. P. 283. Ante, p. 10. that no objection shall be taken or allowed to any such summons or warrant, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as herein-after mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or admit him to bail, in manner herein-after mentioned. Proviso.

NOTE.

Before this statute, the summons was usually directed to the constable, and he was thereby ordered to summon the party; and a duplicate or copy being at the same time given to him, he served such duplicate or copy on the party, keeping the original, in order to prove the service, if necessary. Or, it might be directed to the party; but in practice it was usually

directed to the constable. According to the above section, the summons must now, in all cases, be directed to the party accused. This, as speaking at once to the accused, and informing him what is required of him, is infinitely better than directing it to the constable, as formerly, in which case the duplicate or copy served merely stated the duty of the constable as to the service, but that which was required of the accused was only to be implied from it; and to the class of persons, on whom such summonses are usually served, this was not always very intelligible.

The summons states shortly the matter of the information, which may be in the same form in which the offence is stated in a commitment. The forms, for all indictable offences,—will be found in the first two volumes of Archbold's "Justice of the Peace," alphabetically arranged.

This statute requires the summons to be served by some constable or other peace officer. Heretofore, the summons was frequently given to the party applying for it, in order that he might serve it; but this was found to lead to much abuse, the prosecutor frequently making use of the summons as a threat, in order to exact money from the accused, and if he succeeded in doing so, the magistrate never heard of the matter afterwards. This however cannot now be done, unless indeed the constable or peace officer, to whom the summons is given, collude with the prosecutor.

The summons should be served personally upon the party to whom it is directed, if that can conveniently be done, in order that he may be fully apprized of it, and by appearing in obedience to it, prevent the necessity of issuing a warrant for his apprehension. If however he cannot conveniently be met with, it may be left with some person for him at his last or most usual place of residence; and the constable, in leaving it, should take care to give it to the person there most likely to deliver it to the party, as, to his wife or servant, or, if he be a lodger, to his landlord, or the like. The practice was the same before this statute. See 1 *Arch. J. P.* 283.

The constable is required by this section to attend at the time and place mentioned in the summons for the appearance of the accused, to depose, if necessary, to the service of the summons. This was not required by any statute formerly, but the constable was directed by the summons itself to do so.

If the accused do not appear at the time and place appointed for that purpose by the summons, the justice, upon proof of the service of the summons, will issue his warrant for his apprehension. This was the practice previously to this statute.

It is provided by this section, that no objection shall be taken to the summons or warrant, for any defect in substance or form, or for variance between them and the evidence; such

an objection would be beside the merits of the case, as the party is not then upon his trial, but the question before the magistrate is whether there is sufficient evidence against him to send the case before a grand jury. If however the variance between the offence stated in the summons or warrant, and the warrant, be such as to satisfy the justice that the accused has been deceived or misled by it, he may at the request of the accused adjourn the hearing, and in the mean time, either remand the party, or admit him to bail. All this is new, and in practice will be found a great improvement; for justices have hitherto been constantly annoyed with objections to the summons or warrant, which could not by possibility have any thing to do with the merits of the case, or in any manner tend to disprove the guilt of the accused. At the same time, if the objection be for variance, and the variance be such as to show that the accused has been taken by surprise, and charged by the evidence with an offence wholly different, in point of fact, and not merely in name, from that mentioned in the summons or warrant, it would not be fair to commit him for trial in such a case, without giving him an opportunity of preparing himself for his defence, if he wish to offer any in this stage of the case.

FORMS.

(C.)

Summons to a Person charged with an indictable Offence.

See this form, *ante*, p. 10.

(D.)

Warrant, where the Summons is disobeyed.

See this form, *ante*, p. 10.

X. And be it declared and enacted, that every warrant (B.) hereafter to be issued by any justice or justices of the peace to apprehend any person charged with any indictable offence, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables or peace officers in the county or other district within which the justice or justices issuing such warrant has or have jurisdiction, or ge-

Warrant to
apprehend.
1 J. P. 283.
Ante, p. 9.

How
directed.

How and
where exe-
cuted.
2 J. P. 321.

nerally to all the constables or peace officers within such last-mentioned county or district, and it shall state shortly the offence on which it is founded, and shall name or otherwise describe the offender, and it shall order the person or persons to whom it is directed to apprehend the offender, and bring him before the justice or justices issuing the said warrant, or before some other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, to answer to the charge contained in the said information, and to be further dealt with according to law; and it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in force until it shall be executed; and such warrant may be executed by apprehending the offender at any place within the county, riding, division, liberty, city, borough, or place within which the justice or justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place, and within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough, or place, without having such warrant backed as herein-after mentioned; and in all cases where such warrant shall be directed to all constables or other peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet, or place within such county or district to execute the said warrant within any parish, township, hamlet, or place situate within the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, in like manner as if such warrant were directed specially to such constable by name, and notwithstanding the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer; provided always, that no objection shall be taken

Proviso.

or allowed to any such warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice or justices who shall take the examinations of the witnesses in that behalf, as herein-after mentioned; but if any such variance shall appear to such justice or justices to be such that the party charged has been thereby deceived or misled, it shall be lawful for such justice or justices, at the request of the party so charged, to adjourn the hearing of the case to some future day, and in the meantime to remand the party so charged, or to admit him to bail, in manner herein-after mentioned.

NOTE.

This section makes very little alteration in the law as it was before the passing of this statute. The warrant to apprehend was always required to be under hand and seal. It may in all cases be issued by, and be under the hand and seal of, one justice alone; or it may be, and when granted at petty sessions it sometimes is, under the hands and seals of two or more justices. As to the cases in which it may be issued, see *sect. 1, ante*, p. 5.

It might, and may still, be directed to any person by name; but if such person be not a constable or other peace officer, he cannot be compelled to execute the warrant, or punished for not executing it. 1 *Arch. J. P.* 127, 283. If directed to a constable or other peace officer by name, he is bound to execute it, and punishable for not doing so; and he may execute it at any place within the jurisdiction of the justice granting it. *Id.* 127, 128. Or it might, and may still, be directed to the constable of the parish or district in which it is to be executed, without specially naming him, who may execute it within such parish or district, and is bound to do so. *Id.* 128. Or it might, and may still, be directed to all constables within the jurisdiction of the justice, or to the constable of a particular parish or district and to all other constables and peace officers within the county or other jurisdiction of the justice, in either of which cases any one or more of such constables or peace officers, by whatever name he may be designated,—headborough, tithingman, borsholder, &c.—may execute it in any place within the jurisdiction of the justice granting such warrant. *Id.* 128, 283. So, in all cases where a warrant is directed to two or more persons, it may be executed by either or any of them. *Id.* 128.

The body of the warrant, containing the name or other description of the offender, and the description of the offence with which he is charged, is here sufficiently described generally; the particular description of the offence to be inserted in the warrant, may be the same as is stated in a warrant of commitment for the same offence, and the forms in all cases of indictable offences may be found in the first two volumes of Archbold's "Justice of the Peace," where the offences are treated of in alphabetical order.

Formerly the warrant must have been executed within the jurisdiction of the justice granting it, unless it were backed by a justice of the peace of some other county or district, and then within such other county or district. And it is so still, except in one case, namely, in the case of fresh pursuit, that is to say, where the offender escapes out of the jurisdiction of the justice, into an adjoining county or place, whilst the constable or person having the warrant is in actual pursuit of him; in which case such constable or person may follow him into such adjoining county or place to the distance of seven miles from the border or confines of the jurisdiction. This is a most useful extension of the power of the constable, particularly in cases where the constable has no authority to apprehend the offender without warrant. See 1 Arch. J. P. 128, 129.

The concluding part of this section makes the same provision against objections to the warrant, as is contained in the last section with reference to the summons. This was thought necessary, in consequence of a practice prevalent in some places, of insisting that a warrant to apprehend is in the nature of an information, and may be objected to for defects in form or substance, which no doubt is not, and never has been, the law. At the same time, there may be a variance in the description of the offence or otherwise between the warrant and the evidence before the magistrate, so great, that the accused may possibly be thereby taken by surprise; and it was necessary therefore to make provision that such accused party should not be prejudiced by the variance.

FORM,

(B.)

Warrant to apprehend a person charged with an indictable offence.

See this form, *ante*, p. 9.

Backing
warrants.

XI. And be it enacted, that if the person, against whom any such warrant shall be issued as aforesaid, shall not be found within the jurisdiction of the justice or justices by whom the same shall be issued, or if he shall escape,

go into, reside, or be, or be supposed or suspected to be, in any place in *England* or *Wales* out of the jurisdiction of the justice issuing such warrant, it shall and may be lawful for any justice of the peace for the county or place into which such person shall so escape, or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone being made on oath of the handwriting of the justice issuing such warrant, to make an indorsement (K.) on such warrant, signed with his name, authorizing the execution of such warrant within the jurisdiction of the justice making such indorsement, and which indorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where such warrant shall be so indorsed, to execute the same in such other county or place, and to carry the person against whom such warrant shall have issued, when apprehended, before the justice and justices of the peace who first issued the said warrant, or before some other justice or justices of the peace in and for the same county, riding, division, city, liberty, borough, or place, or before some justice or justices of the county, riding, division, liberty, city, borough, or place where the offence in the said warrant mentioned appears therein to have been committed: provided always, that if the prosecutor, or any of the witnesses upon the part of the prosecution, shall then be in the county or place where such person shall have been so apprehended, the constable or other person or persons who shall have so apprehended such person may, if so directed by the justice backing such warrant, take and convey him before the justice who shall have so backed the said warrant, or before some other justice or justices of the same county or place; and the said justice or justices may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect in manner herein-after directed with respect to persons charged before a justice or justices of the peace with an

English
warrant
backed in
England.
1 J. P. 284.

Post, p. 35.

Proviso.
1 J. P. 284.

Sect. 22.

offences alleged to have been committed in another county or place than that in which such persons have been apprehended.

NOTE.

Under this section, if the offender happen not to be within the jurisdiction of the justice granting the warrant, the constable holding it, may take it to any justice of the peace for the county or district in England or Wales, in which the offender may happen to be, or may be supposed to be, who will swear him as to the handwriting of the justice who granted the warrant, and will thereupon indorse on it an authority to execute it within his jurisdiction. It will be convenient to have the form of this indorsement printed on the back of all the printed forms of warrants, so that the magistrate will merely have to fill up the blank form with the name of the constable and the names of the counties or other jurisdictions, and sign it, to complete the backing. Formerly, the statute upon this subject (24 Geo. 2, c. 55, s. 1) merely required the justice to indorse his name on the warrant; but in practice a special authority was always indorsed on it, and signed by the justice.

The warrant, thus backed, will authorize not only the person bringing the warrant, but all those to whom it was originally directed, and all constables and other peace officers of the county or place where the warrant is backed, to execute it within such latter county or place. Formerly the backing of a warrant merely authorized the party bringing it, and those to whom it was originally directed, but not the constables or peace officers of the county or district in which it was backed, to execute it. This was often attended with inconvenience; where from circumstances it required more than one person to execute the warrant, it was necessary to bring constables from the county or district in which the warrant issued, into the foreign county, for the purpose of executing it, at possibly a considerable expense, when it might more conveniently and at a much less expense have been executed by the peace officers of the latter county.

The backing authorizes the warrant to be executed in any place within the county or district within which the justice indorsing it has jurisdiction. If the offender be not found within that jurisdiction, the constable may again get it backed by a justice of the peace of some other county, &c. and so on until the offender is found and apprehended. Or, if the offender is to be found in the county, &c. in which the warrant issued, its having been backed does not prevent it from being afterwards executed in that county.

The offender, when apprehended, must be conveyed before

a justice of the peace of the county in which the warrant issued, or before a justice of the peace of the county, &c. in which the offence was committed,—unless the justice backing it order by his indorsement that he shall be brought before him or some other justice within his jurisdiction. At the time of getting a warrant backed, therefore, it will be necessary to state to the justice whether there are any witnesses within his jurisdiction, whom it may be desirable to have examined, and bound over to give evidence, to enable him to judge whether in his indorsement he should order the offender, when apprehended, to be brought before him.

If the offender be brought before the justice who backed the warrant, or some other justice of the same county, &c. such justice then proceeds in the manner described in the 22nd section of this statute, that is to say: he takes the examination in writing of any witnesses, and receives any evidence, in proof of the charge, which may be produced before him; and if he think this to be sufficient proof of the charge, he at once commits the prisoner for trial, or admits him to bail, and binds over the prosecutor (if present) to prosecute, and the witnesses to give evidence, in the ordinary way, as if the offence had been committed within his own jurisdiction; but if he be of opinion that the evidence is not sufficient to prove the charge, he then binds over any witnesses he may have examined, by recognizance to give evidence, and by his warrant (R. 1) *Post*, p. 71. he orders the offender to be taken before some justice of the county, &c. in which the offence was committed, together with the depositions and recognizances; and the constable, after conveying the prisoner before such justice, will receive an order for the amount of his expenses, as directed hereafter in the 22d section.

FORM.

(K.)

Indorsement in backing a Warrant.

{ Whereas proof upon oath hath this day been made to wit. } before me, one of her Majesty's justices of the peace for the said [county] of —, that the name of J. S. to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned; I do therefore hereby authorize W. T. who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may lawfully be executed, and also all constables and other peace officers of the said [county] of —, to exe-

cute the same within the said last mentioned [county], and to bring the said A. B., if apprehended within the same [county], before me, or before some other justice or justices of the peace of the same [county], to be dealt with according to law.*

Given under my hand this — day of — 185—.

J. L.

* The words following this asterisk are to be used only where the justice backing the warrant shall think fit, and may be omitted in backing English warrants in Ireland, Scotland, &c. or in backing Irish or Scotch warrants, &c. in England.

(R. 1.)

Warrant to convey the accused before a justice of the county, &c. in which the offence was committed.

See this form, *post*, p. 71.

English warrants backed in Ireland, or Irish warrants backed in England.
1 J. P. 286.

XII. And be it enacted, that if any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in *England* or *Wales*, by any justice of the peace, or by any judge of her Majesty's court of Queen's Bench, or justice of oyer and terminer or gaol delivery, for any indictable offence against the laws of that part of the united kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county or place in that part of the united kingdom called *Ireland*, or if any person against whom a warrant shall be issued in any county or place in *Ireland*, by any justice of the peace, or by any judge of her Majesty's court of Queen's Bench there, or any justice of oyer and terminer or gaol delivery, for any crime or offence against the laws of that part of the united kingdom, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in that part of the united kingdom called *England* or *Wales*, it shall and may be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant in manner herein-before mentioned, or to the like effect, and which

Ante, p. 35.

warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all constables or other peace officers of the county or place where such warrant shall be so indorsed, to execute the said warrant in the county or place where the justice so indorsing it shall have jurisdiction, by apprehending the person against whom such warrant shall have been granted, and to convey him before the justice or justices who granted the same, or before some other justice or justices of the peace in and for the same county or place, and which said justice or justices before whom he shall be so brought shall thereupon proceed in such manner as if the said person had been apprehended in the said last-mentioned county or place.

NOTE.

The indorsement in this case is the same as under the last section, except that the justice making it does not thereby order the offender to be brought before him or any other justice of the same county; but the offender, if apprehended, must be forthwith conveyed before the justice who granted the warrant, or before some other justice of the same county, who shall thereupon proceed in the same manner as if the party had been apprehended within his jurisdiction.

The warrant, when backed, may be executed either by the person who produced it, or by any of the constables, &c. to whom it was originally directed, or by any of the constables or peace officers within the jurisdiction of the justice who backed it; and it may be executed at any place within such jurisdiction.

The backing of warrants in these cases was formerly regulated by stat. 45 G. 3, c. 92, and 54 Geo. 3, c. 186, s. 2.

FORM.

(K.)

Indorsement in backing such a Warrant.

See this form, *ante*, p. 35.

XIII. And be it enacted, that if any person against whom a warrant shall be issued in any county, riding, division, liberty, city, borough, or place in *England* or ^{English} warrants backed in the isles of

Man, Guernsey, Jersey, Alderney, or Sark, or warrants from any of those isles backed in England.

Wales, by any justice of the peace, or by any judge of her Majesty's court of Queen's Bench, or justices of oyer and terminer or gaol delivery, for any indictable offence, shall escape, go into, reside, or be, or be supposed or suspected to be, in any of the isles of *Man, Guernsey, Jersey, Alderney*, or *Sark*, it shall be lawful for any officer within the district into which such accused person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, who shall have jurisdiction to issue any warrant or process in the nature of a warrant for the apprehension of offenders within such district, to indorse (K.) such warrant in the manner herein-before mentioned, or to the like effect; or if any person against whom any warrant, or process in the nature of a warrant, shall be issued in any of the isles aforesaid, shall escape, go into, reside, or be, or be supposed or suspected to be, in any county, riding, division, liberty, city, borough, or place in *England* or *Wales*, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or be supposed or suspected to be, to indorse (K.) such warrant or process in manner herein-before mentioned; and every such warrant or process, so indorsed, shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same respectively was originally directed, and also to all constables and peace officers in the county, district, or jurisdiction within which such warrant or process shall be so indorsed, to execute the same within the county, district, or place where the justice or officer indorsing the same has jurisdiction, and to convey such offender, when apprehended, into the county or district wherein the justice or person who issued such warrant or process shall have jurisdiction, and carry him before such justice or person, or before some other justice or person within the same county or district who shall have jurisdiction to commit such offender to prison for trial, and such justice or person may thereupon proceed in such and the same manner as

Ante, p. 35.

Ante, p. 35.

if the said offender had been apprehended within his jurisdiction.

NOTE.

This section is new. The statutes heretofore in force respecting the backing of warrants, did not extend to the islands here mentioned.

The indorsement is the same as under sect. 11, *ante*, except that the justice or person making it does not thereby order the offender to be brought before him, or other justice, &c. of the same county, but the offender, if apprehended, must be conveyed forthwith before the justice or person who granted the warrant, or such other justice or person of the same county or district who shall have authority to commit the offender for trial, and who shall thereupon proceed in the same manner as if the party had been apprehended within his jurisdiction.

The warrant, when backed, may be executed either by the person who produced it, or by any of the persons to whom it was directed, or by any of the constables or peace officers within the county, district or jurisdiction within which it was backed, and may be executed at any place within such county, district or jurisdiction.

FORM.

(K.)

Indorsement in backing such a Warrant.

See this form, *ante*, p. 35.

XIV. And be it declared and enacted, that if any person against whom a warrant shall be issued by any justice of the peace for any county or place within *England* or *Wales* or *Ireland*, or by any judge of her Majesty's court of Queen's Bench or justice of oyer and terminer or gaol delivery in *England* or *Ireland*, for any crime or offence against the laws of those parts respectively of the united kingdom of *Great Britain* and *Ireland*, shall escape, go into, reside, or be, or be supposed or suspected to be, in any place in that part of the said united kingdom called *Scotland*, it shall be lawful for the sheriff or steward depute or substitute, or any justice of the peace of the county or place where such person or persons shall go into, reside, or be, or be supposed or suspected to be, to indorse (K.) the said warrant in manner herein-before mentioned, or to the like effect, which warrant so indorsed shall be a sufficient authority

English or
Irish war-
rants backed
in Scotland.
1 J. P. 285,
286.

Ante, p. 35.

to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all sheriffs' officers, stewards' officers, constables, and other peace officers, of the county or place where such warrant shall be so indorsed, to execute the same within the county or place where it shall have been so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in *England, Wales, or Ireland* where the justice or justices who first issued the said warrant shall have jurisdiction in that behalf, and to carry him before such justice or justices, or before any other justice or justices of the peace of and for the same county or place, to be there dealt with according to law, and which said justice or justices are hereby authorized and required thereupon to proceed in such and the same manner as if the said offender had been apprehended within his or their jurisdiction.

NOTE.

The backing of English warrants in Scotland, was formerly regulated by stat. 13 Geo. 3, c. 31, s. 1, and 54 Geo. 3, c. 186, s. 2; and the backing of Irish warrants, by stat. 45 Geo. 3, c. 92, s. 3, and 54 Geo. 3, c. 186, s. 6.

The indorsement in this case, is the same as under sect. 11, *ante*, except that the sheriff or steward depute or substitute, or justice of the peace, making it, does not thereby order the defendant to be brought before him, but, if apprehended, he must be forthwith conveyed before the justice who granted the warrant or some other justice within the same jurisdiction, who shall thereupon proceed in the same manner as if the offender had been there apprehended.

The warrant, when backed, may be executed either by the person who produced it, or by any of the persons to whom it was originally directed, or by any of the sheriff's officers, steward's officers, constables or other peace officers of the county or place where such warrant is indorsed, and may be executed at any place within such county or place.

FORM.

(K.)

Indorsement in backing such a Warrant.

See this form, *ante*, p. 35.

XV. And be it enacted, that if any person against whom a warrant shall be issued by the lord justice general, lord chief justice clerk, or any of the lords commissioners of justiciary, or by any sheriff or steward depute or substitute, or justice of the peace, of that part of the united kingdom of *Great Britain* and *Ireland* called *Scotland*, for any crime or offence against the laws of that part of the united kingdom, shall escape, go into, reside, or be, or shall be supposed or suspected to be, in any county or place in *England* or in *Ireland*, it shall be lawful for any justice of the peace in and for the county or place into which such person shall escape or go, or where he shall reside or be, or shall be supposed or suspected to be, to indorse (K.) the said warrant in manner herein-before mentioned, and which said warrant so indorsed shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same was originally directed, and also to all constables and other peace officers of the county or place where the justice so indorsing such warrant shall have jurisdiction, to execute the said warrant in the county or place where it is so indorsed, by apprehending the person against whom such warrant shall have been granted, and to convey him into the county or place in *Scotland* next adjoining to that part of the united kingdom called *England*, and carry him before the sheriff or steward depute or substitute, or one of the justices of the peace, of such county or place, and which said sheriff, steward depute or substitute, or justice of the peace, is hereby authorized and required thereupon to proceed in such and the same manner, according to the rules and practice of the law of *Scotland*, as if the said offender had been apprehended within such county or place in *Scotland* last aforesaid.

Scotch warrants backed in England or Ireland. 1 J. P. 285, 286.

Ante, p. 35.

NOTE.

The backing of Scotch warrants in England, was formerly regulated by stat. 13 Geo. 3, c. 31, s. 2, and 54 Geo. 3, c. 186, s. 2, and the backing of Scotch warrants in Ireland, by stat. 54 Geo. 3, c. 186, s. 2.

The indorsement in this case, is the same as under the 11th section, *ante*, except that the justice making it does not thereby order the offender to be brought before him or any other justice of the same county, but the offender, if apprehended, must be forthwith conveyed into the county or place in Scotland next adjoining to England, and carried before the sheriff or steward depute or substitute, or one of the justices of the peace, of such county or place, who shall thereupon proceed according to the rules and practice of the law of Scotland, as if such offender had been there apprehended.

The warrant, when backed, may be executed either by the person who produced it, or by any of the constables, &c. to whom it was originally directed, or by any of the constables or peace officers within the jurisdiction of the justice who backed it; and it may be executed at any place within such jurisdiction.

It is objected (S.), and stated to be "a singular fact," that no provision is here made for the backing of Irish or Scotch warrants in the Isles of Man, &c. It would be very singular if there were, this Act relating merely to the duties of justices of the peace in England and Wales, and to the backing of their warrants elsewhere.

FORM.

(K.)

*Indorsement in backing such a Warrant.*See this form, *ante*, p. 35.

Summons to
a witness to
attend and
give evi-
dence.
1 J. P. 294.

Post, p. 46.

XVI. And be it enacted, that if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the examination of the witnesses against the accused, such justice may and is hereby required to issue his summons (L. 1) to such person, under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what he shall know concerning the charge made against such

accused party; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode,) it shall be lawful for the justice or justices before whom such person should have appeared, to issue a warrant (L. 2) under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as herein-before is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (L. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (L. 4) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough,

If he do not obey the summons, then warrant. 1 J. P. 205.

Post, p. 46.

In what cases warrant in the first instance.

Post, p. 47.

Refusing to be examined, imprisonment.

Post, p. 47.

or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

NOTE.

Before the passing of this Act, any justice of the peace, either upon a prisoner being remanded, or indeed at any time before the examination was finally closed, might grant a summons requiring any person to attend before him or before some other justice within the same jurisdiction, to give evidence respecting the matter of the charge against the prisoner. 1 *Arch. J. P.* 294. But as this was formerly done as a matter of course, and as the practice has been sometimes abused, by obtaining summonses for persons who really knew nothing of the matter, and thereby putting them to great inconvenience and expense, it has been thought right, in the present Act, to require that oath should be made by some credible person that the witness intended to be summoned can give material evidence for the prosecution, and will not attend voluntarily to be examined. Upon oath or affirmation being made to this effect, the justice is now bound to issue his summons (L. 1), at any period of the proceeding. However, it is only in cases where the witness resides or is within the jurisdiction of the justice, and where the examination is to be within such jurisdiction, that a summons can be granted under this section; in all other cases, where the attendance of a witness is to be compelled, before a justice of the peace out of sessions, with respect to an indictable offence, it can only be done by a subpoena issuing from the Crown office.

This summons must be served, either personally, or by leaving it for the party with some person at his last or most usual place of abode.

It was formerly doubted whether, in case the witness did not obey the summons, the magistrate could issue his warrant to apprehend him and bring him before him to give evidence. The general opinion of the profession was, that he had no such authority. In *Evans v. Rees*, 12 *Ad. & El.* 55, 9 *Law J.* 93 *m.*, this matter was doubted by Littledale, Patteson, and Williams, JJ.; but they refrained from giving any positive opinion upon the subject. Lord Denman, C. J. intimated an opinion that a warrant might legally be granted; but as the warrant in that case required the constable to apprehend the witness and bring him before the magistrate, not to give his evidence, but to find sufficient bail to appear and give evidence at the assizes, the whole court held it to be bad. By this section, however, if the

person summoned do not attend to give evidence, and no just excuse be offered for his neglect or refusal to attend, the justice then present, after proof on oath or affirmation of the summons having been served on such person, either personally, or by leaving it for him with some person at his last or most usual place of abode, may grant his warrant (L. 2), to bring him up to give evidence.

Or if, before any summons is issued, evidence on oath or affirmation be given, to the satisfaction of the justice, that it is probable that such person will not attend to give evidence, without being compelled to do so, then, instead of issuing a summons, the justice may issue his warrant (L. 3) in the first instance. This is new; no warrant was hitherto allowed to be issued to compel the attendance of a witness, unless where a previous summons was disobeyed, and even in that case the legality of the practice was much doubted.

There is another clause in this section also new, namely, that which enables the justice, before whom any such person shall appear, either in obedience to such summons, or upon being brought before him by virtue of the warrant, to commit (L. 4) him to the gaol or house of correction for any time not exceeding seven days, if he "refuse to be examined on oath or affirmation concerning the premises, or shall refuse to take the oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises, as shall then be put to him, without offering any just excuse for such refusal."

It is objected (S.) that the power of summoning witnesses should not be confined to cases where the witness resides in the same county or district within which the justice has jurisdiction. But it was thought that it would be inconvenient to extend it,—to give a justice of Northumberland a power to summon a witness from Cornwall. And as to giving justices a power of summary punishment for non-attendance, it would be an absurdity, and useless or worse. The crown office subpoena, which is not now, as formerly, expensive, can readily be adopted in all cases where this section does not apply.

It is also objected (S.) that this power of summoning witnesses does not extend to the summoning of those on the part of the defendant. Now, it must be remarked that this proceeding before magistrates, in indictable cases, is *ex parte*; they have no right to balance the testimony on both sides, which would be in effect a trying of the case; all they have to do is to ascertain whether the evidence for the prosecution is sufficient to put the party on his trial. Therefore it is, that this Act gives no power to justices to summon the witnesses for the defendant: if they wish for witnesses at the trial, they may have the usual subpoena from the court. But where the defendant is upon his trial before justices out of sessions, as in

the cases of convictions and orders,—there a power is given to the justices to summon his witnesses, as well as those of the prosecutor or complainant, by stat. 11 & 12 Vict. c. 43, s. 7, *post*.

FORMS.

(L. 1.)

Summons of a Witness.

To E. F. of — [labourer].

Whereas information hath been laid before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of — that A. B. [&c., as in the summons or warrant against the accused], and it hath been made to appear to me upon [oath] that you are likely to give material evidence for the [prosecution]: these are therefore to require you to be and to appear before me on — next at — o'clock in the forenoon at — or before such other justice or justices of the peace for the same county as may then be there, to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal, this — day of — in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L. S.)

(L. 2.)

Warrant where a Witness has not obeyed a Summons.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas information having been laid before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, that A. B. [&c., as in the summons]; and it having been made to appear to [me] upon oath that E. F. of — [labourer] was likely to give material evidence for the prosecution, I did duly issue my summons to the said E. F., requiring him to be and appear before me on — at —, or before such other justice or justices of the peace for the same county as might then be there, to testify what he should know respecting the said charge so made against the said A. B. as aforesaid: and whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E. F.: and whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: these are therefore to command you to bring and have the said E. F. before me on — at — o'clock in the forenoon at —, or before such other justice or justices of the peace for the same [county] as may then

be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.
J. S. (L. S.)

(L. 3.)

Warrant for a Witness in the first instance.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas information hath been laid before the undersigned [one] of her Majesty's justices of the peace in and for the said [county] of —, that [&c. as in summons]; and it having been made to appear to [me] upon oath that E. F. of — [labourer], is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do; These are therefore to command you to bring and have the said E. F. before me on —, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same [county] as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.
J. S. (L. S.)

(L. 4.)

Warrant of Commitment of a Witness for refusing to be sworn or to give Evidence.

To the constable of —, and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas A. B. was lately charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c. as in the summons]; and it having been made to appear to [me] upon oath that E. F. of — was likely to give material evidence for the prosecution, I duly issued my summons to the said E. F. requiring him to be and appear before me on —, at —, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before me [or being brought before me by virtue of a warrant in that behalf, to testify as aforesaid], and being required to make oath or affirmation as a witness in that behalf, hath now refused so to do [or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him], without

offering any just excuse for such his refusal: These are therefore to command you the said constable to take the said E. F. and him safely to convey to the [house of correction] at —, in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said E. F. into your custody in the said [house of correction], and him there safely keep for the space of — days for his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L. S.)

Examination
of witnesses.
1 J. P. 287.

XVII. And be it enacted, that in all cases where any person shall appear or be brought before any justice or justices of the peace charged with any indictable offence, whether committed in *England* or *Wales*, or upon the high seas, or on land beyond the sea, or whether such person appear voluntarily upon summons or have been apprehended, with or without warrant, or be in custody for the same or any other offence, such justice or justices, before he or they shall commit such accused person to prison for trial, or before he or they shall admit him to bail, shall, in the presence of such accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath or affirmation of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall be signed also by the justice or justices taking the same; and the justice or justices before whom any such witness shall appear to be examined as aforesaid shall, before such witness is examined, administer to such witness the usual oath or affirmation, which such justice or justices shall have full power and authority to do; and if upon the trial of the person so accused as first aforesaid it shall be proved, by the oath or affirmation of any credible witness, that any person whose deposition shall have been taken as aforesaid is

Post, p. 50.
Upon oath
or affirmation.
J. P. 342.

Depositions
in what
cases read,
if the wit-
ness be dead
or absent,
&c.
1 J. P. 289.

dead, or so ill as not to be able to travel, and if also it be proved that such deposition was taken in the presence of the person so accused, and that he or his counsel or attorney had a full opportunity of cross-examining the witness, then, if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it shall be lawful to read such deposition as evidence in such prosecution, without further proof thereof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

NOTE.

The statute in force upon this subject (7 Geo. 4, c. 64, ss. 2, 3) previously to the passing of this act, regulated the taking of examinations in all cases of felony, and of indictable misdemeanors, in separate sections; but there was no substantial difference between the one case and the other, and in practice the mode of proceeding was the same in all cases. It was thought right, therefore, in the present act, to have but one rule of practice in all cases of indictable offences,—treason, felony, and misdemeanors,—whether committed in England, or on the high seas, or in places beyond the seas;—in all these cases the witnesses against the accused shall be examined on oath or affirmation in his presence, their depositions put into writing, and signed by them.

It has been holden by the Criminal Appeal court, that under this section, the prisoner has a right to be present when any questions are asked of the witnesses on whose depositions he is to be committed to trial, and to compare their written deposition with their verbal statement; and therefore where after the evidence was taken before the magistrate, the witnesses went into a back office with the magistrate's clerk for the purpose of having their depositions more correctly made out, and then the clerk put some questions to them: the court held this to be illegal, although the depositions when completed were read over to the witnesses in the prisoner's presence, and he had a full opportunity to cross examine them. *R. v. Christopher et al.*, 14 *Shaw's J. P.* 83.

This section provides that if afterwards, at the trial of the offender, the witness thus examined should be dead, or so ill as to be unable to travel, his deposition, if taken in the presence of the prisoner, so that he or his counsel or attorney had an opportunity of cross-examining him, may be read as evidence; and if purporting to be signed by the justice before whom it purports to have been taken, it shall be deemed *prima facie* to

have been taken by such justice, without further proof. The statute upon this subject (7 Geo. 4, c. 64) previous to this act, contained no such enactment; and yet it has been determined that an examination of a witness taken under that statute, might afterwards be read in evidence against the accused, if the witness were then dead, *R. v. Smith, R. & Ry.* 339, *R. v. Osborne*, 8 Car. & P. 113, or bed-ridden, and not likely ever to be able to attend at the assizes, *R. v. Wilshaw*, Car. & M. 145, or had become insane, *R. v. Marshall et al.* Car. & M. 147, or was kept out of the way by or on behalf of the prisoner. *R. v. Gutteridges et al.* Car. & P. 471, per Parke, B. And it is probable, that although the cases of death, and inability to travel from illness, are expressly stated in this statute, as those in which the deposition of a witness may be read against a prisoner on his trial, it may be holden that such depositions may also be read in evidence, if the witness be insane, or kept out of the way by the prisoner or by some person on his behalf, at the time of the trial.

It is objected (S) that it is not sufficient here to state that the witness must be examined in the *presence* of the prisoner, it should also be in his hearing!! To such shifts are persons driven, who object for objection's sake. How, if the prisoner were deaf and could not hear,—I suppose the learned objector would then say that the witnesses should not be examined at all, but that the prisoner, by reason of his extreme deafness, should be discharged.

FORMS.

(M.)

Depositions of Witnesses.

to wit. } The examination of C. D. of — [farmer] and
E. F. of — [labourer], taken on [oath] this —
day of —, in the year of our Lord —, at —, in the
[county] aforesaid, before the undersigned, [one] of her
Majesty's justices of the peace for the said [county], in the
presence and hearing of A. B., who is charged this day
before [me], for that he the said A. B. on — at — [&c.,
describing the offence as in a warrant of commitment].
This deponent C. D. on his [oath] saith as follows [&c.,
stating the deposition of the witness as nearly as possible in
the words he uses. When his deposition is complete let him
sign it].

And this deponent E. F., upon his oath, saith as follows
[&c.]

The above depositions of C. D. and E. F. were taken and
[sworn] before me at —, on the day and year first above
mentioned.

J. S.

XVIII. And be it enacted, that after the examinations of all the witnesses on the part of the prosecution as aforesaid shall have been completed, the justice of the peace, or one of the justices, by or before whom such examination shall have been so completed as aforesaid, shall, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him, and shall say to him these words, or words to the like effect: "Having heard the evidence, do you wish to say any thing in answer to the charge? you are not obliged to say any thing unless you desire to do so, but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" and whatever the prisoner shall then say in answer thereto shall be taken down in writing (N.), and read over to him, and shall be signed by the said justice or justices, and kept with the depositions of the witnesses, and shall be transmitted with them as herein-after mentioned; and afterwards upon the trial of the said accused person, the same may, if necessary, be given in evidence against him, without further proof thereof, unless it shall be proved that the justice or justices purporting to sign the same did not in fact sign the same: provided always, that the said justice or justices, before such accused person shall make any statement, shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial, notwithstanding such promise or threat: provided nevertheless, that nothing herein enacted or contained shall prevent the prosecutor in any case from giving in evidence any admission or confession, or other statement of the person accused or charged, made at any time, which by law would be admissible as evidence against such person.

Statement by
the accused.
1 J. P. 292.

Post, p. 54.

Proviso.
1 J. P. 293.

Proviso.

NOTE.

This address to the accused is in that true spirit of fairness towards him which distinguishes the administration of criminal justice in this country, from its administration in any other country in Europe. It has been often recommended for adoption from the bench, and in our text-books, but never made the subject of legislative enactment until now; and it is enacted now, for the purpose of making the practice general and uniform. Whatever the accused may say, after this admonition, must be deemed to be said advisedly, and may in all fairness be afterwards read in evidence against him on his trial. And since the last edition of this work, it has been holden that in all cases where the prisoner's statement appears to have been taken down by the magistrate, after the caution here mentioned, in the manner directed by the above section, and transmitted with the depositions, it may be read in evidence against the prisoner without further proof. *R. v. Harris*, *et al.*, 13 *Law Times*, 509; *R. v. Sansome*, 15 *Id.* 119.

The other clause in this section,—which directs the justice, before the accused makes any statement, to warn him that he has nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been holden out to him, to induce him to make any admission or confession of guilt,—was introduced for this reason:—any admission or confession which an accused person has been induced to make, by any promise of favour or threat, cannot be received in evidence against him; 1 *Arch. J. P.* 292; and where the promise or threat has been made by the constable or other person to him before he appears before the magistrate, and he afterwards makes the admission or confession before the magistrate, the inducement is holden to be continuing, and to influence him in making the admission or confession, so as to prevent its being given in evidence. But where after an inducement by a threat or promise has been holden out to a prisoner, and before any confession actually made, he is undeceived as to the promise and threat, and assured that he has nothing to hope from the one, or dread from the other, any confession he makes afterwards will be receivable in evidence. *R. v. Cleaves*, 4 *Car. & P.* 221, *R. v. Richards*, 5 *Car. & P.* 318. And therefore where constables had induced a prisoner to confess, by telling him that his companions had “split,” and he might as well do the same; but afterwards, upon his appearing before the magistrate who took the examinations, he was informed that his confessing would do him no good, but that he would be committed to prison to take his trial: Lord Denman C. J., held that a confession by the prisoner to the magistrate, after this caution, was receivable in evidence. *R. v. Howes*, 6 *Car. & P.* 404, S. P. *R. v. Hearn*, *Car. & M.* 109.

The last proviso in this section, was introduced *ex abun-*

danti cautelâ, lest it should by possibility be inferred from what is here stated that an admission or confession of a prisoner is not evidence against him, unless the above caution is given to him by the magistrate at the time of taking the examination.

It is objected (S.) that this section is imperfect, in giving only the form of the magistrate's admonition to the prisoner, by way of caution as to committing himself by what he might say; that it ought also to have given a form of his telling the prisoner that he had nothing to fear from the threats, or hope from the promises, previously held out to him; and a page and a half of abuse of the statute, in good set terms, is added, in support of it. In answer, it is merely necessary to state, that the caution, the form of which is given, must necessarily be the same in all cases; but in the other case, what is required to be stated may require a different mode of statement in each particular case, according as the magistrate may be informed of any promise or threat held out, and by whom, &c. The matter, however, is put beyond all doubt by a very recent decision of the Criminal Appeal court, in *R. v. Sansome*; in that case it appeared that the ordinary caution, the first of the two in this section mentioned, was read to the prisoner, after which he made a statement, amounting to a confession, which was signed by him and by the committing magistrate, and transmitted with the depositions; at the trial, however, it was objected that this statement could not be given in evidence against the prisoner, as the latter caution with respect to the threat or promise had not also been given to him by the magistrate: but the court held that this was not necessary; the latter caution was not a condition precedent to the admissibility of a confession of the prisoner before the committing magistrate, and was necessary only where there had been a previous threat or promise; if given, it has the effect of rendering the confession admissible in evidence, notwithstanding such previous threat or promise; and if not given, the case remains as at common law, and the confession is admissible in evidence, unless the party were influenced by some previous threat or promise to make it. 19 *Law J.* 143, *m.* So, where after the first of these cautions, the prisoner made a statement, which was taken down, but was not signed by him or by the magistrate; he was then remanded, and upon being brought up again, some questions were put to the witnesses by the prisoner's attorney, who then objected that as an addition had been made to the evidence, the prisoner's former statement could not be evidence against him; afterwards at the trial, the same objection being made, the statement was admitted in evidence against the prisoner, and the point reserved for the opinion of the Criminal Appeal court: and that court afterwards held that the evidence was properly received. *R. v. Bond*, 19 *Law J.* 138, *m.*

FORMS.

(N.)

Statement of the Accused.

—: *A. B. stands charged before the undersigned, [one] of her Majesty's justices of the peace in and for the [county] aforesaid, this — day of — in the year of our Lord — for that he the said A. B. on —, at —, [&c., as in the caption of the depositions]; and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. is now addressed by me as follows: " Having heard the evidence, do you wish to say any thing in answer to the charge? you are not obliged to say any thing unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial ;" whereupon the said A. B. saith as follows:*

[Here state whatever the prisoner may say, and in his very words, as nearly as possible. Get him to sign it if he will.]

A. B.

*Taken before me at —
the day and year first above
mentioned.*

J. S.

Place where
examination
taken, not an
open court.

XIX. And be it declared and enacted, that the room or building in which such justice or justices shall take such examinations and statement as aforesaid shall not be deemed an open court for that purpose; and it shall be lawful for such justice or justices, in his or their discretion, to order that no person shall have access to, or be or remain in, such room or building, without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be best answered by so doing.

NOTE.

This has always been considered so, although there was no express enactment upon the subject. Taking the depositions and examinations upon a charge for an indictable offence, is an initiatory proceeding, in order to ascertain whether there is sufficient evidence against the prisoner to warrant the

magistrate in committing him for trial ; he is not on his trial at the time, otherwise the court should, in fairness, be an open court. And it may also be of the utmost consequence, where in such a case inquiries are made as to the prisoner's accomplices and accessories, that the proceedings before the magistrate should be secret ; and therefore a discretion is given by this section to the justice, to prevent the public from having access to the room where a party is thus brought before him charged with an indictable offence. When he sits for the purpose of hearing a charge for an offence, punishable upon summary conviction, the law is different ; there he acts judicially, and the room in which he acts must be deemed an open and public court, to which every person has a right of access, and where nothing can be done in secret.

It is objected (S.) that provision should be made for the prisoner being entitled to have his attorney present at his examination ; and in his usual forcible manner, the learned objector says, in reference to its not being allowed,—“ that this should be, is a grievous reproach to our criminal law, and is perhaps the blackest stain now remaining upon its character.” The learned gentleman is possibly not aware of the reason why the room, in which magistrates take the examination of witnesses in indictable cases, is not deemed in law a public court, and the magistrates may exclude from it any person they think proper ; and it is this : it may be of the utmost consequence, with a view to the detection of the confederates of the prisoner, principals or accessories, that the evidence given should not come to their knowledge before the proper steps should be taken for their apprehension. It would of course be inconsistent with this, that the attorney for the prisoner, who is probably the attorney for his confederates also, should be allowed to be present to hear it. When this reason does not apply, I believe magistrates usually not only permit the prisoner to have his professional assistant present, but are happy to have the aid and advice of respectable attorneys, in the development of the facts of the charge made against their client. In cases of convictions and orders, where the party is actually on his trial, not only is the room where the case is heard an open court, but the defendant is entitled as of right to have the assistance of counsel and attorney. See 11 § 12 *Vict. c. 43, s. 12, post.*

XX. And be it enacted, that it shall be lawful for the justice or justices before whom any such witness shall be examined as aforesaid, to bind by recognizance (O. 1) the prosecutor and every such witness to appear at the next court of oyer and terminer or gaol delivery, or superior court of a county palatine, or court of general

Binding over the prosecutor and witnesses by recognizance. *Post*, p. 60. 1 J. P. 295. 287.

Recogni-
zance.
2 J. P. 425,
426.

Post, p. 61.

Recogni-
zance, depo-
sitions, &c.
to be trans-
mitted to the
court in
which the
trial is to be.
1 J. P. 297.
237.

Witness re-
fusing to
enter into
recogni-
zances,
punishment.

Post, p. 62.

or quarter sessions of the peace, at which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which said recognizance shall particularly specify the profession, art, mystery, or trade of every such person entering into or acknowledging the same, together with his christian and surname, and the parish, township, or place of his residence, and if his residence be in a city, town, or borough, the recognizance shall also particularly specify the name of the street, and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof, or a lodger therein; and the said recognizance, being duly acknowledged by the person so entering into the same, shall be subscribed by the justice or justices before whom the same shall be acknowledged, and a notice (O. 2) thereof, signed by the said justice or justices, shall at the same time be given to the person bound thereby; and the several recognizances so taken, together with the written information (if any), the depositions, the statement of the accused, and the recognizance of bail (if any) in every such case, shall be delivered by the said justice or justices, or he or they shall cause the same to be delivered, to the proper officer of the court in which the trial is to be had, before or at the opening of the said court on the first day of the sitting thereof, or at such other time as the judge, recorder or justice, who is to preside in such court at the said trial, shall order and appoint: provided always, that if any such witness shall refuse to enter into or acknowledge such recognizance as aforesaid, it shall be lawful for such justice or justices of the peace, by his or their warrant (P. 1) to commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place in which the accused party is to be tried, there to be imprisoned and safely kept until after the trial of such accused party, unless in the meantime such witness shall duly enter into such recognizance as aforesaid before some one justice of the peace for the county, riding, division, liberty, city,

borough, or place in which such gaol or house of correction shall be situate: provided nevertheless, that if afterwards, from want of sufficient evidence in that behalf or other cause, the justice or justices before whom such accused party shall have been brought, shall not commit him or hold him to bail for the offence with which he is charged, it shall be lawful for such justice or justices, or any other justice or justices of the same county, riding, division, liberty, city, borough, or place, by his or their order (P. 2) in that behalf, to order and direct the keeper of such common gaol or house of correction where such witness shall be so in custody, to discharge him from the same, and such keeper shall thereupon forthwith discharge him accordingly. Proviso.
Post, p. 63

NOTE.

In binding over the prosecutor and witnesses, by recognizance, it is material to consider where the prisoner is to be tried, whether at the assizes or quarter sessions, and fill up the recognizance accordingly. The sessions, by stat. 5 & 6 Vict. c. 38, s. 1, have no jurisdiction of the following offences:—

Abduction of women or girls.

Bankrupts,—offences against any provision of the laws relating to bankrupts and insolvents.

Bigamy, and offences against the law relating to marriage.

Blasphemy, and offences against religion.

Bribery.

Concealing or endeavouring to conceal the birth of a child.

Conspiracy or combination,—except conspiracies or combinations to commit an offence of which the sessions have jurisdiction, when committed by one person.

Deeds, &c.,—stealing or fraudulently taking or injuring or destroying any document or written instrument, being or containing evidence of the title to any real estate, or any interest in lands, tenements or hereditaments.

Felony, punishable with death.

Felony, which (when committed by a person not previously convicted of felony) is punishable with transportation for life.

Fire, setting, to crops of corn, grain or pulse, or to any part of a wood, coppice or plantation of trees, or to any heath, gorze, furze or fern.

Libel, blasphemous, seditious or defamatory,—composing, printing, or publishing.

Misprision of treason.

Murder.

Oaths, unlawful, administering or taking.

Parliament, offences against either house of.

Perjury and subornation of perjury. Also, making, or suborning any other person to make a false oath, affirmation or declaration, punishable as perjury or as a misdemeanor.

Præmunire, offences subject to the penalty of.

Queen's title, prerogative, person, or government, offences against.

Records, or documents belonging to any court of law or equity, or relating to any proceeding therein,—stealing, or fraudulently taking, or injuring or destroying.

Treason.

Wills or testamentary papers, stealing, or fraudulently destroying or concealing.

Also, by stat. 4 & 5 Will. 4, c. 36, (which established the central criminal court,) s. 17, the justices of the peace acting in and for the cities of London and Westminster, the liberty of the tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, shall not, at their respective general or quarter sessions of the peace, or at any adjournment thereof, try any person or persons charged with any capital offence, or with any of the following offences committed or alleged to be committed within the limits of this Act * :—

Abduction.

Abortion,—administering drugs or other things, or doing anything, with intent to cause or procure.

Assault with intent to commit a felony.

Bankrupts not surrendering, or concealing their effects.

Breaking of buildings within the curtilage of a dwelling-house.

Breaking down bridges or banks of rivers.

Breaking of shops, warehouses or counting houses.

* These limits are thus described by sect. 2 :—

City of London.

County of Middlesex.

In the county of *Essex* :—the parishes of Barking, East Ham, West Ham, Little Ilford, Low Layton, Walthamstow, Wanstead St. Mary, Woodford, and Chingford ;

In the county of *Kent* :—Charlton, Lee, Lewisham, Greenwich, Woolwich, Eltham, Plumstead, St. Nicholas Deptford, that part of St. Paul Deptford, which is in the county of

Kent, the liberty of Kidbrook, and the hamlet of Mottingham.

In the county of *Surrey* :—the borough of Southwark, the parishes of Battersea, Bermondsey, Camberwell, Christchurch, Clapham, Lambeth, St. Mary Newington, Rotherhithe, Streatham, Barnes, Putney, that part of St. Paul Deptford, which is within the county of Surrey, Tooting, Graveney, Wandsworth, Merton, Mortlake, Kew, Richmond, Wimbledon, the Clink liberty, and the district of Lambeth Palace.

Capital offences.

Cattle, stealing.

Cattle, wounding.

Coin, offences relating to, in stat. 2 Will. 4, c. 34.

Conspiracy.

Embezzlement.

Forgery, and the uttering of forged instruments; and the other offences enumerated in the forgery Act, 1 Will. 4, c. 66.

Horse-stealing.

House-breaking.

Larceny, above 5*l.*; in a dwelling house.

Larceny of goods in the progress of manufacture.

Larceny of goods on navigable rivers or canals.

Larceny by clerks and servants.

Larceny after a previous conviction.

Manslaughter.

Manufacture, goods in progress of, stealing or destroying.

Perjury.

Personating any officer, seaman, or other person, in order to receive any wages, pay, allowance or prize money due or supposed to be due.

Personating any out-pensioner of Greenwich hospital, in order to receive any out-pension allowance due or supposed to be due.

Poison, administering or attempting to administer, with intent to kill, or to do some grievous bodily harm.

Receivers of stolen goods.

Rewards, taking, for helping to stolen goods.

Sheep, stealing.

Sheep, killing, with intent to steal the carcasses.

Ships or vessels, destroying or damaging.

Threatening letters, sending, and using threats to extort money.

Accessories before or after the fact to any of these offences.

In all these cases, the recognizances must be to prosecute or give evidence at the central criminal court; in all other cases where any of the above offences are committed elsewhere in Essex, Kent or Surrey, and in cases of offences not enumerated here, committed within those counties, the prosecutor and witnesses are bound over to the assizes or sessions, according to stat. 5 & 6 Vict. c. 38, s. 1, *ante*, p. 57.

The recognizance (O. 1) we see is required to specify the addition of the party bound over, his trade, profession, &c., and his place of abode, with great particularity. All this was previously required by stat. 3 Geo. 4, c. 46, s. 4, no doubt for the purpose of identifying the recognitor, and of more easily punishing any person who shall have entered into the recognizance in his name.



The provision here for committing the witness for refusing to enter into his recognizance, (P. 1, 2) is new, and will be found very useful. This must not be confounded with the refusal to give evidence, punishable under section 15, *ante*, p. 43: there, he refuses to be examined or sworn, or to give his evidence; here he is supposed to have given his evidence, but refuses to be bound over to give it at the trial; there, he is committed to prison for a certain time, as a punishment for his contempt; here, he is imprisoned, in order that he may be forthcoming at the trial.

The justice is by this section required to transmit the recognizances, the information, depositions, and recognizance of bail, to the proper officer of the court where the trial is to be had, before or at the opening of the court, "or at such other time as the judge, recorder, or justice who is to preside in such court at the said trial, shall order and appoint." This last provision is necessary, to give time to the presiding judge to read over the depositions in the several cases, before he charges the grand jury.

It is objected (S.) to the binding of witnesses by recognizance, generally, that "the idea of a party being called upon compulsorily to acknowledge being indebted to the crown, when in fact no debt exists, is one of those legal fictions so dishonouring to the administration of justice in this country." How an idea can be a legal fiction, we are not precisely told. But I believe it is generally acknowledged that the binding of prosecutors and witnesses to prosecute or give evidence, coupled with the present mode of enforcing payment in case of a breach of the condition, is a most efficient mode of making such parties perform the duties thus cast upon them by law. As to the fiction itself, it is not more "dishonouring" than that of a bond for the performance of covenants, or for another person duly accounting, or the like.

FORMS.

(O. 1.)

Recognizance to Prosecute or give Evidence.

—: *Be it remembered, that on the — day of — in the year of our Lord — C. D. of — in the township of — in the said county, farmer, [or C. D. of No. 2, — street in the parish of — in the borough of —, surgeon, of which said house he is tenant,] personally came before me, one of her Majesty's justices of the peace for the said county, and acknowledged himself to owe to our sovereign lady the Queen the sum of — of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lady the*

Queen, her heirs and successors, if he the said C. D. shall fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at —, before me

Condition to Prosecute.

The condition of the within-written recognizance is such, that whereas one A. B. was this day charged before me, J. S. justice of the peace within mentioned, for that [&c., as in the caption of the depositions], if therefore he the said C. D. shall appear at the next court of oyer and terminer or general gaol delivery [or at the next court of general quarter sessions of the peace] to be holden in and for the [county] of — and there prefer or cause to be preferred a bill of indictment for the offence aforesaid against the said A. B., and there also duly prosecute such indictment,—then the said recognizance to be void, or else to stand in full force and virtue.*

Condition to Prosecute and give Evidence.

Same as the last form to the asterisk*, and then thus :—
“ and there prefer or cause to be preferred a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment, and give evidence thereon as well to the jurors who shall then inquire of the said offence, as also to them who shall pass upon the trial of the said A. B.—then the said recognizance to be void, or else to stand in full force and virtue.

Condition to give Evidence.

Same as the last form but one, to the asterisk*, and then thus :—“ and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence, as also to the jurors who shall pass upon the trial of the said A. B. if the said bill shall be found a true bill, then the said recognizance to be void, or else to stand in full force and virtue.

(O. 2.)

Notice of the said Recognizance to be given to the Prosecutor and his Witnesses.

Take notice, that you C. D. of — are bound in to wit. } the sum of — to appear at the next court of [general quarter sessions of the peace] in and for the county of — to be holden at — in the said county, and



then and there [prosecute and] give evidence against A. B.; and unless you then appear there, and [prosecute and] give evidence accordingly, the recognizance entered into by you will be forthwith levied on you. Dated this — day of — 185—.

J. S.

(P. 1.)

Commitment of Witness for refusing to enter into the Recognizance.

To the constable of — and to the keeper of the [house of correction] at — in the said [county] of —.

Whereas A. B. was lately charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c., as in the summons to the witness], and it having been made to appear to [me] upon oath that E. F. of — was likely to give material evidence for the prosecution, [I] duly issued [my summons to the said E. F., requiring him to be and appear] before [me] on — at —, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before [me] [or being brought before [me] by virtue of a warrant in that behalf, to testify as aforesaid], hath been now examined by [me] touching the premises, but being by [me] required to enter into a recognizance conditioned to give evidence against the said A. B. hath now refused so to do: these are therefore to command you the said constable to take the said E. F. and him safely to convey to the [house of correction] at — in the [county] aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said E. F. into your custody in the said [house of correction], there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime such E. F. shall duly enter into such recognizance as aforesaid in the sum of — pounds, before some one justice of the peace for the said [county], conditioned in the usual form to appear at the next court of [oyer and terminer or general gaol delivery, or general quarter sessions of the peace], to be holden in and for the [county] of —, and there to give evidence before the grand jury upon any bill of indictment which may then and there be preferred against the said A. B. for the offence aforesaid, and also to give evidence upon the trial of the said A. B. for the said offence, if a true bill should be found against him for the same.

Given under my hand and seal, this — day of — in the year of our Lord —, at — in the [county] aforesaid.

(P. 2.)

Subsequent Order to discharge the Witness.

To the keeper of the [house of correction] at — in the [county] of —.

Whereas by [my] order dated the — day of — [instant], reciting that A. B. was lately before then, charged before [me] for a certain offence therein mentioned, and that E. F. having appeared before me, and being examined as a witness for the prosecution in that behalf, refused to enter into a recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid: And whereas for want of sufficient evidence against the said A. B. the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: these are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody as to the said commitment, and suffer him to go at large.

Given under [my] hand and seal, this — day of — in the year of our Lord —, at — in the [county] aforesaid.

J. S. (L. s.)

XXI. And be it enacted, that if, from the absence of witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful to and for the justice or justices before whom the accused shall appear or be brought, by his or their warrant (Q. 1.) from time to time to remand the party accused for such time as by such justice or justices in their discretion shall be deemed reasonable, not exceeding eight clear days, to the common gaol or house of correction, or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall then be acting; or if the remand be for a time not exceeding three clear days, it shall be lawful for such justice or justices verbally to order the constable or other person in whose custody such party accused may then be, or any other constable or person to be named by the

*Remanding
the accused.
1 J. P. 290.*

Post, p. 65.

- said justice or justices in that behalf, to continue or keep such party accused in his custody, and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing such examination :
- Proviso.* provided always, that any such justice or justices may order such accused party to be brought before him or them, or before any other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, at any time before the expiration of the time for which such accused party shall be so remanded, and the gaoler or officer in whose custody he shall then be, shall duly obey such order :
- Proviso.* provided also, that instead of detaining the accused party in custody during the period for which he shall be so remanded, any one justice of the peace before whom such accused party shall so appear or be brought as aforesaid, may discharge him, upon his entering into a recognizance (Q. 2, 3), with or without a surety or sureties, at the discretion of such justice, conditioned for his appearance at the time and place appointed for the continuance of such examination ; and if such accused party shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice, or any other justice of the peace who may then and there be present, upon certifying (Q. 4) on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said accused party.
- Post, p. 66, 67.*
- Post, p. 67.*

NOTE.

By this section, it is left to the discretion of the examining justice whether he will remand the accused or not ; he may do it on account of the absence of a witness or witnesses, or for any other reasonable cause, of the reasonableness of which cause he is to judge. And he may remand him for any time not ex-

ceeding eight days. But when he is brought up, at the end of the time for which he is remanded, if the cause of the remand still exist, and there is a reasonable prospect of the prosecutor being shortly able to perfect his proofs against the prisoner, the magistrate may again remand him; for the statute enables him to do so from time to time.

The prisoner may be remanded to the lock-up house, a place now very usually established throughout England, (*see* 5 & 6 *Vict. c.* 109, *ss.* 22, 23,) for the temporary imprisonment of offenders; or he may be sent to the gaol or house of correction, or any other place of security, according to its proximity, or the saving of expense in his conveyance, as may be thought most convenient.

There is one excellent and salutary provision in this section, namely, that enabling the examining justice, instead of remanding the accused, and thereby sending him to prison, to let him go, upon his recognizance or a recognizance with sureties (Q. 2, 3), conditioned for his appearance at a time specified in the condition; and if he do not attend at the time and place therein mentioned, any justice then present may indorse a certificate of his non-appearance (Q. 4) on the recognizance, transmit it to the clerk of the peace to be put in suit, and he may again issue his warrant for the party's apprehension.

It is objected (S.) that there is an ambiguity in the words in this section,—“from time to time to remand the party accused for such time as by such justice or justices in their discretion may be deemed reasonable, not exceeding eight clear days,” and that it is doubtful whether the remand in the whole is not to exceed eight days, or whether at each time the party may be remanded for eight days. To me, however, there appears to be no pretence for any such doubt: the magistrates may remand the accused for such time as they think fit, not exceeding eight days; and they may do this from time to time. The statement appears perfectly plain, and certain.

FORMS.

(Q. 1.)

Warrant remanding a Prisoner.

To the constable of — and to the [keeper of the house of correction] at —, in the said [county] of —.

Whereas A. B. was this day charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c., as in the warrant to apprehend]: and it appears to me to be necessary to remand the said A. B.: these are therefore to command you the said constable, in her Majesty's name, forthwith to convey the said A. B. to the [house of correction] at —, in the

said [county], and there to deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said house of correction, and there safely keep him until the — day of — instant, when I hereby command you to have him at —, at — o'clock in the forenoon of the same day, before me, or before such other justice or justices of the peace for the said [county] as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this — day of —, in the year of our lord —, at — in the [county] aforesaid.
J. S. (L. S.)

(Q. 2.)

Recognizance of Bail instead of Remand, on an Adjournment of Examination.

—: Be it remembered, that on the — day of —, in the year of our Lord —, A. B. of —, labourer, L. M. of —, grocer, and N. O. of —, butcher, personally came before me, one of her Majesty's justices of the peace for the said [county], and severally acknowledged themselves to owe to our lady the Queen the several sums following; that is to say, the said A. B. the sum of — and the said L. M. and N. O. the sum of — each, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at —, before me, J. S.

Condition.

The condition of the within-written recognizance is such, that whereas the within-bounden A. B. was this day [or on — last past] charged before me, for that [&c., as in the warrant]: and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the — day of — instant; if therefore the said A. B. shall appear before me on the said — day of — instant, at — o'clock in the forenoon, or before such other justice or justices of the peace for the said [county] as may then be there, to answer [further] to the said charge, and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

(Q. 3.)

Notice of such Recognizance to be given to the Accused and his Sureties.

—: Take notice, that you A. B. of —, are bound in the sum of — and your sureties L. M. and N. O. in the sum of — each, that you A. B. appear before me J. S., one of her Majesty's justices of the peace for the [county] of —, on — the — day of — instant, at — o'clock in the forenoon, at —, or before such other justice or justices of the peace for the same [county] as may then be there, to answer further to the charge made against you by C. D., and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the recognizances entered into by yourself and sureties will be forthwith levied on you and them. Dated this — day of —, 185—. J. S.

(Q. 4.)

Certificate of Non-appearance to be indorsed on the Recognizance.

I hereby certify, that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default, by reason whereof the within written recognizance is forfeited. J. S.

XXII. And whereas it often happens that a person is charged before a justice of the peace with an offence alleged to have been committed in another county or place than that in which such person has been apprehended, or in which such justice has jurisdiction, and it is necessary to make provision as to the manner of taking the examinations of the witnesses, and of committing the party accused, or admitting him to bail, in such a case; be it therefore enacted, That whenever a person shall appear or shall be brought before a justice or justices of the peace in the county, riding, division, liberty, city, borough, or place wherein such justice or justices shall have jurisdiction, charged with an offence alleged to have been committed by him in any county or place within *England* or *Wales* wherein such justice or justices shall not have jurisdiction, it shall be lawful for

Examination, &c. where the offence was committed in another county, &c.

How, if the
evidence
prove the
charge.

How, if the
evidence do
not prove
the charge.

Post, p. 71.

such justice or justices and he and they are hereby required to examine such witnesses, and receive such evidence, in proof of such charge, as shall be produced before him or them, within his or their jurisdiction; and if in his or their opinion such testimony and evidence shall be sufficient proof of the charge made against such accused party, such justice or justices shall thereupon commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where the offence is alleged to have been committed, or shall admit him to bail, as herein-after mentioned, and shall bind over the prosecutor (if he have appeared before him or them) and the witnesses by recognizance accordingly, as is herein-before mentioned; but if such testimony and evidence shall not in the opinion of such justice or justices be sufficient to put the accused party upon his trial for the offence with which he is so charged, then such justice or justices shall bind over such witnesses as he shall have examined, by recognizance, to give evidence, as herein-before is mentioned, and such justice or justices shall, by warrant (R. 1) under his or their hand and seal or hands and seals, order such accused party to be taken before some justice or justices of the peace in and for the county, riding, division, liberty, city, borough, or place where and near unto the place where the offence is alleged to have been committed, and shall at the same time deliver the information and complaint, and also the depositions and recognizances so taken by him or them, to the constable who shall have the execution of such last-mentioned warrant, to be by him delivered to the justice or justices before whom he shall take the accused in obedience to the said warrant, and which said depositions and recognizances shall be deemed to be taken in the case, and shall be treated to all intents and purposes as if they had been taken by or before the said last-mentioned justice or justices, and shall, together with such depositions and recognizances as such last-mentioned justice or justices shall take in the matter of such charge against

the said accused party, be transmitted to the clerk of the court where the said accused party is to be tried, in the manner and at the time herein-before mentioned, if such accused party shall be committed for trial upon the said charge, or shall be admitted to bail; and in case such accused party shall be taken before the justice or justices last aforesaid by virtue of the said last-mentioned warrant, the constable or other person or persons to whom the said warrant shall have been directed, and who shall have conveyed such accused party before such last-mentioned justice or justices, shall be entitled to be paid his costs and expenses of conveying the said accused party before the said justice or justices; and upon the said constable or other person producing the said accused party before such justice or justices, and delivering him into the custody of such person as the said justice or justices shall direct or name in that behalf, and upon the said constable delivering to the said justice or justices the warrant, information (if any), depositions, and recognizances aforesaid, and proving by oath the handwriting of the justice or justices who shall have subscribed the same, such justice or justices to whom the said accused party is so produced shall thereupon forthwith ascertain the sum which ought to be paid to such constable or other person for conveying such accused party and taking him before such justice or justices, as also his reasonable costs and expenses of returning, and thereupon such justice or justices shall make an order (R. 2.) upon the treasurer of the county, riding, division, or liberty, city, borough, or place, or if such city, borough, or place shall be contributory to the county rate of any county, riding, division, or liberty, then upon the treasurer of such county, riding, division, or liberty respectively to which it is contributory, for payment to such constable or other person of the sum so ascertained to be payable to him in that behalf, and the said treasurer, upon such order being produced to him, shall pay the amount to the said constable or other person producing the same, or to any person who shall present

Costs of conveying the accused into the proper county, &c.

Post, p. 7.

Proviso.

the same to him for payment: Provided always, that if such last-mentioned justice or justices shall not think the evidence against such accused party sufficient to put him upon his trial, and shall discharge him without holding him to bail, every such recognizance so taken by the said first-mentioned justice or justices as aforesaid shall be null and void.

NOTE.

This section introduces a new mode of proceeding, which will have the effect of saving much expense in the initiatory proceedings before magistrates. It has been remarked already, that this statute gives jurisdiction to magistrates, no matter where in England or Wales the offence may have been committed:—to the magistrate within whose jurisdiction the offence has been committed, no matter whether the offender be within his jurisdiction or not, and to the magistrate within whose jurisdiction the offender is, or is supposed or suspected to be, no matter where in England or Wales the offence may have been committed. In the latter case, where the offender appears before the magistrate, either upon summons, or after being apprehended, and it appears that the offence was committed out of his jurisdiction, if no witnesses appear against him, and it appear that no witnesses against him reside within the magistrates' jurisdiction, a warrant (R. 1) is made out, ordering him to be taken before a justice of the peace of the county or other jurisdiction where the offence is alleged to have been committed. If a witness or witnesses appear against him, but the testimony is not sufficient, in the opinion of the justice, to put the party upon his trial, their depositions are nevertheless taken, a warrant (R. 1) is made out, ordering him to be taken before a justice of the peace of the county or other jurisdiction where the offence is alleged to have been committed, together with the information and depositions, who will thereupon proceed to complete the examinations, and will commit the prisoner for trial, or admit him to bail, or discharge him, in the ordinary way. But if the witnesses who appear against the prisoner make out a case against him, sufficient in the opinion of the justice to put him upon his trial, then he at once commits (T. 1) him to the gaol or house of correction of the county or district where he is to be tried, or admits him to bail, and having bound over the prosecutor (if present) and the witnesses by recognizance, transmits the depositions and recognizances to the proper officer, as already mentioned.

The section makes provision for the costs and expenses of the constable in conveying the prisoner before the justice of the proper county; a similar provision is made by sect. 25 *post*,

for the expenses of conveying a prisoner to the gaol under the ordinary warrant of commitment.

FORMS.

(R. 1.)

Warrant to convey the Accused before a Justice of the County, &c. in which the offence was committed.

To W. T., constable of —, and to all other peace officers in the said [county] of —.

Whereas A. B. of —, labourer, hath this day been charged before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of —, for that [&c., as in the warrant to apprehend] : and whereas [1] * have taken the deposition of C. D., a witness examined by [me] in this behalf; but inasmuch as [1] * am informed that the principal witnesses to prove the said offence against the said A. B. reside in the [county] of C., where the said offence is alleged to have been committed: these are therefore to command you the said constable, in her Majesty's name, forthwith to take and convey the said A. B. to the said [county] of C., and there carry him before some justice or justices of the peace in and for that [county], and near unto the [parish of D.], where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and [1] hereby further command you the said constable to deliver to the said justice or justices the information in this behalf, * and also the said deposition of C. D.* now given into your possession for that purpose, together with this precept.

Given under my hand and seal, this — day of — in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (l. s.)

* * If no witness have been examined, omit the words between the asterisks *—*

(R. 2.)

Order for Payment of the Constable's Expenses.

To R. W. Esquire, treasurer of the said county of C.

Whereas W. T., constable of — in the county of A., hath by virtue of and in obedience to a certain warrant of J. S. esquire, [one] of her Majesty's justices of the peace in and for the said county of A., taken and conveyed one A. B., charged before the said J. S. with having [&c. stating shortly the offence], from — in the said county of A. to — in the said county of C., a distance of — miles, and produced the said A. B. before me S. P. one of her Majesty's justices of the peace in and for the said county of C. and delivered him into the custody of — by [my] direction, to answer to the

said charge, and further to be dealt with according to law: And whereas the said W. T. hath also delivered to [me] the said warrant, together with the information in that behalf, and also the deposition of C. D. in the said warrant mentioned, and hath proved to [me] upon oath the handwriting of the said J. S. subscribed to the same: and whereas [I] have ascertained that the sum which ought to be paid to the said W. T. for conveying the said A. B. from the said county of A. to the said county of C., and taking him before [me], is the sum of —, and that the reasonable expenses of the said W. T. in returning will amount to the further sum of —, making together the sum of —: these are therefore to order you, as such treasurer of the said county of C. to pay unto the said W. T. the said sum of —, according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this — day of — 185—.

J. P.

(T. 1.)

Warrant of Commitment.

See this form, *post*, p. 80.

Bail in felony and certain misdemeanors taken at the time of the examination.
1 J. P. 154.

XXIII. And be it enacted, That where any person shall appear or be brought before a justice of the peace charged with any felony, or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with obtaining or attempting to obtain property by false pretences, or with a misdemeanor in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanor for the prosecution of which the costs may be allowed out of the county rate, such justice of the peace may, in his discretion, admit such person to bail, upon his procuring and producing such surety or sureties as in the opinion of such justice will be sufficient to ensure the appearance of such accused person at the time and

place when and where he is to be tried for such offence ; and thereupon such justice shall take the recognizance (S. 1, 2) of the said accused person and his surety or sureties, conditioned for the appearance of such accused person at the time and place of trial, and that he will then surrender and take his trial, and not depart the court without leave ; and in all cases where a person charged with any indictable offence shall be committed to prison to take his trial for the same, it shall be lawful at any time afterwards, and before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, for the justice or justices of the peace who shall have signed the warrant for his commitment, in his or their discretion, to admit such accused person to bail in manner aforesaid ; or if such committing justice or justices shall be of opinion that for any of the offences hereinbefore mentioned the said accused person ought to be admitted to bail, he or they shall in such cases, and in all other cases of misdemeanors, certify (S. 3) on the back of the warrant of commitment his or their consent to such accused party being bailed, stating also the amount of bail which ought to be required, it shall be lawful for any justice of the peace, attending or being at the gaol or prison where such accused party shall be in custody, on production of such certificate, to admit such accused person to bail in manner aforesaid ; or if it shall be inconvenient for the surety or sureties in such a case to attend at such gaol or prison, to join with such accused person in the recognizance of bail, then such committing justice or justices may make a duplicate of such certificate (S. 4) as aforesaid, and upon the same being produced to any justice of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for such last-mentioned justices to take the recognizance of the surety or sureties in conformity with such certificate, and upon such recognizance being transmitted to the keeper of such gaol or prison, and produced, together with the certificate on the warrant

Post, pp. 76, 77.

Bail in the like cases after commitment.

Post, p. 77.

Post, p. 77.

Bail in other
misde-
meanors.

Recogni-
zance, to
whom trans-
mitted.

Proviso as
to bail in
treason.
1 J. P. 154.

Proviso.
2 J. P. 553.

Post, p. 76.

of commitment as aforesaid to any justice of the peace attending or being at such gaol or prison, it shall be lawful for such last-mentioned justice thereupon to take the recognizance of such accused party, and to order him to be discharged out of custody as to that commitment, as herein-after mentioned; and where any person shall be charged before any justice of the peace with any indictable misdemeanor other than those herein-before mentioned, such justice, after taking the examinations in writing as aforesaid, instead of committing him to prison for such offence, shall admit him to bail in manner aforesaid, or if he have been committed to prison, and shall apply to any one of the visiting justices of such prison, or to any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, to be admitted to bail, such justice shall accordingly admit him to bail in manner aforesaid; and in all cases where such accused person in custody shall be admitted to bail by a justice of the peace other than the committing justice or justices as aforesaid, such justice of the peace so admitting him to bail shall forthwith transmit the recognizance or recognizances of bail to the committing justice or justices, or one of them, to be by him or them transmitted, with the examinations, to the proper officer: provided nevertheless, that no justice or justices of the peace shall admit any person to bail for treason, nor shall such person be admitted to bail, except by order of one of her Majesty's secretaries of state, or by her Majesty's court of Queen's Bench at *Westminster*, or a judge thereof in vacation: provided also, that when in cases of misdemeanor the defendant shall be entitled to a traverse at the next assizes or quarter sessions, and shall not be bound to take his trial until the second assizes or sessions, in every such case the recognizance (S. 1) of bail shall be conditioned that he shall appear and plead at the next assizes or sessions, and then traverse the indictment, and that he shall surrender and take his trial at such second assizes or sessions, unless

such accused party shall, before he enter into such recognizance, choose and consent to take his trial at such first assizes or sessions, in which case the recognizance may be in the ordinary form herein-before mentioned.

NOTE.

Justices of the peace cannot admit to bail for treason. But they may, in their discretion, admit to bail in all cases of felony, and in the following misdemeanors:—Assault with intent to commit a felony,—assault in pursuance of a conspiracy to raise wages,—assault upon a peace officer in the execution of his duty, or upon any person acting in his aid,—attempt to commit felony,—breach or neglect of duty as a peace officer,—concealing the birth of a child,—false pretences, obtaining money, &c. by,—indecent exposure of the person,—perjury or subornation of perjury,—receiving property stolen or obtained by false pretences, where the offence is a misdemeanor,—and riot. In all other cases of misdemeanor, the justices must take bail, if sufficient sureties be tendered.

The accused may be admitted to bail by the examining magistrate, immediately after the examinations have been taken. Or if he be committed to prison, he may at any time afterwards and before the first day of the sitting or session at which he is to be tried, be admitted to bail by the justice who signed his warrant of commitment. Also, where the offender is committed for felony, or for any of the misdemeanors above specified, and the committing justice thinks that it is a case in which he ought to be admitted to bail, although his sureties be not then forthcoming, the justice may in his discretion, and in all other cases of misdemeanor he must, certify (S. 3) on the back of the commitment his consent to the party's being admitted to bail, and stating the amount of bail that ought to be required; in which case any justice of the peace attending at the gaol, on production of the certificate, may admit him to bail, and order him to be discharged. In some cases, however, it may be inconvenient for the sureties to attend at the prison for the purpose of bailing the prisoner; then, on getting a copy of the commitment and indorsement from the gaoler, and presenting it to the committing magistrate, he will give you a duplicate of the certificate (S. 4) on a separate paper, and on that being taken to any other magistrate of the county, &c., he will take the recognizance of the bail; and this being transmitted to the gaoler, then any justice of the peace, attending or being at the prison, will take the recognizance of the prisoner, and order him to be discharged. And in these cases, where a prisoner is admitted to bail by a magistrate other than the committing justice, such magistrate shall forthwith transmit the recognizance of bail to the committing magistrate, and he shall transmit it together with the depositions to the proper officer.

The bail is taken, by stating verbally to the prisoner and his sureties the substance of the recognizance, in the second person, thus: *You A. B. of —, and you L. M. of —, and you N. O. of —, severally acknowledge yourselves to owe to our sovereign lady the Queen the several sums following, that is to say, You the said A. B. the sum of —, &c. &c.; and then stating the condition, but in the second person. The recognizance (S. 1) is afterwards drawn up in form; and at the time of entering into it, a note of it (S. 2) is given to the accused and his sureties. If in cases of misdemeanor the accused will be entitled to a traverse, (see 2 Arch. J. P.) the recognizance should be drawn up accordingly. Vide infra.*

(S. 1.)

Recognizance of Bail.

Be it remembered, that on the — day of — in the year of our Lord —, A. B. of —, labourer, L. M. of —, grocer, and N. O. of —, butcher, personally came before [us] the undersigned, two of her Majesty's justices of the peace for the said [county], and severally acknowledged themselves to owe to our lady the Queen the several sums following; (that is to say,) the said A. B. the sum of — and the said L. M. and N. O. the sum of — each, of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. fail in the condition indorsed.

Taken and acknowledged, the day and year first above mentioned, at — before us,

J. S.

J. N.

Condition in ordinary Cases.

The condition of the within written recognizance is such, that whereas the said A. B. was this day charged before [us], the justices within mentioned, for that [&c., as in the warrant]; if therefore the said A. B. will appear at the next court of oyer and terminer and general gaol delivery [or court of general quarter sessions of the peace] to be holden in and for the county of —, and there surrender himself into the custody of the keeper of the [common gaol] there, and plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and take his trial upon the same, and not depart the said court without leave,—then the said recognizance to be void, or else to stand in full force and virtue.

Condition where the Defendant is entitled to a Traverse.

The condition of the within written recognizance is such, that whereas the said A. B. was this day charged before [me], the

justice within mentioned, for that [&c., as in the warrant or summons]; if therefore the said A. B. will appear at the next court of general quarter sessions of the peace [or court of oyer and terminer and general gaol delivery] to be holden in and for the county of —, and there plead to such indictment as may be found against him by the grand jury, for or in respect of the charge aforesaid, and shall afterwards at the then next court of general quarter sessions of the peace [or court of oyer and terminer and general gaol delivery] surrender himself into the custody of the keeper of the [house of correction] there, and take his trial upon the said indictment, and not depart the said court without leave,—then the said recognizance to be void, or else to stand in full force and virtue.

(S. 2.)

Notice of the said Recognizance to be given to the Accused and his Bail.

Take notice, that you A. B. of —, are bound in the sum of — and your [sureties L. M. and N. O.] in the sum of — each, that you A. B. appear, &c. [as in the condition of the recognizance], and not depart the said court without leave; and unless you the said A. B. personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this — day of —, 185—.

J. S.

(S. 3.)

Certificate of Consent to Bail by the committing Justice, indorsed on the Commitment.

I hereby certify, that I consent to the within named A. B. being bailed by recognizance, himself in — and [two] sureties in — each.

J. S.

(S. 4.)

The like on a separate Paper.

Whereas A. B. was on the — committed by me to the [house of correction] at —, charged with [&c., naming the offence shortly]:

I hereby certify, that I consent to the said A. B. being bailed by recognizance, himself in —, and [two] sureties in — each. Dated the — day of —, 185—.

J. S.

XXIV. And be it enacted, that in all cases where a Warrant of justice or justices of the peace shall admit to bail any deliverance on bail being person, who shall then be in any prison, charged with the given for a

prisoner
after com-
mitment.
1 J. P. 156.
157.

Infra.

offence for which he shall be so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance (S. 5) under his or their hand and seal or hands and seals, requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence; and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same.

NOTE.

This is the authority to the gaoler to discharge the prisoner; if he were to discharge him without it, he would be guilty of an escape, although bail had been regularly put in for the prisoner, and their and his recognizances duly taken.

FORM.

(S. 5.)

Warrant of Deliverance, on Bail being given for a Prisoner already committed.

To the keeper of the [house of correction] at — in the said [county] of —.

Whereas A. B. late of —, labourer, hath before [us, two] of her Majesty's justices of the peace in and for the said county, entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer and general gaol delivery [or court of general quarter sessions of the peace] to be holden in and for the county of —, to answer our sovereign lady the Queen, for that [&c., as in the commitment], for which he was taken and committed to your said [house of correction]: these are therefore to command you, in her said Majesty's name, that if the said A. B. do remain in your custody in the said [house of correction] for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this — day of —, in the year of our lord — at — in the [county] afore-

said.
J. S. (L. S.)
J. N. (L. S.)

Discharge or
commitment.
1 J. P. 298.

XXV. And be it enacted, that when all the evidence offered upon the part of the prosecution against the accused party shall have been heard, if the justice or justices of the peace then present shall be of opinion that it is not sufficient to put such accused party upon his trial for any indictable offence, such justice or jus-

tices shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if, in the opinion of such justice or justices, such evidence is sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of such accused party, then such justice or justices shall, by his or their warrant (T. 1), commit him to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place to which by law he may now be committed, or, in the case of an indictable offence committed on the high seas, or on land beyond the sea, to the common gaol of the county, riding, division, liberty, city, borough, or place within which such justice or justices shall have jurisdiction, to be there safely kept until he shall be thence delivered by due course of law, or admit him to bail as hereinbefore mentioned.

1 J. P. 299.

1 J. P. 298.

Post, p. 80.

NOTE.

The duty of a justice of the peace, in this respect, is similar to that of a grand jury; he is not to try the prisoner, he is not to judge whether the evidence given is sufficient to convict him, but he is simply to ascertain whether the evidence given raises a strong or even probable presumption against the prisoner, and if so, he must commit or bail him. If he think that the evidence does not raise that presumption, and there does not appear to be any other material evidence to be brought forward against him, then it will be the justice's duty to discharge him. The discharge in this case is merely verbal.

The committal may be to the common gaol of the county, &c. in which the offence was committed. 1 *Arch. J. P.* 298. Or it may be to any house of correction near to the place where the assizes or sessions are to be holden, at which the prisoner is intended to be tried. 5 & 6 *W. 4, c. 38, s. 3.*

Justices of a town or place, having exclusive jurisdiction for the trial of felonies and misdemeanors, may nevertheless commit for *capital* felonies to the gaol of the county in which such town or place is situate, to be tried at the next gaol delivery. 60 *G. 3* & 1 *G. 4, c. 19, s. 1.*

And justices of boroughs or franchises, not having power to hear and determine felonies, may commit felons for trial at the sessions for the county in which such borough or franchise is situate, 4 & 5 *W. 4, c. 27, s. 1*, or for trial at the assizes.

And in committing for trial, care must be taken not to commit for trial at the sessions, for an offence of which the sessions have not jurisdiction. *See ante*, pp. 57-59.

For offences committed on the high seas, or on land beyond the sea, the commitment must be to the common gaol of the county, &c. within which the committing justice has jurisdiction. *Supra*. If the prisoner is not to be tried within that jurisdiction, he is afterwards removed by *habeas corpus* to the gaol of the county or place in which the trial is to be.

It is objected (S.), that this section obliges the justices to discharge or commit the party immediately after all the evidence on the part of the prosecution against the accused shall have been heard; and it is loudly complained that this will deprive the accused of an opportunity of proving his innocence, by calling witnesses before the magistrate to prove an alibi, &c. This objection proceeds from a misunderstanding of the duties of a justice of peace, in the case of a person brought before him charged with an indictable offence. His duties are analogous to those of a grand jury; he is not to try the case, not to weigh the evidence on both sides and strike a balance, but merely to ascertain whether there is evidence enough against the prisoner to warrant his being sent for trial before a jury of his country. The learned objector might as well complain that by the law, as it stands at present, the accused party is not allowed to send his witnesses before the grand jury, when they are considering the bill against him.

FORM.

(T. 1.)

Warrant of Commitment.

To the constable of — and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas A. B. was this day charged before me, J. S., one of her Majesty's justices of the peace in and for the said [county] of —, on the oath of C. D. of —, farmer, and others, for that [&c., stating shortly the offence]: these are therefore to command you the said constable of —, to take the said A. B., and him safely to convey to the [house of correction] at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.
J. S. (L. S.)

XXVI. And be it enacted, that the constable or any of the constables or other persons, to whom the said warrant of commitment shall be directed, shall convey such accused person therein named or described to the gaol or other prison mentioned in such warrant, and there deliver him, together with such warrant, to the gaoler, keeper, or governor of such gaol or prison, who shall thereupon give such constable or other person so delivering such prisoner into his custody a receipt (T. 2) for such prisoner, setting forth the state and condition in which such prisoner was when he was delivered into the custody of such gaoler, keeper, or governor; and in all cases where such constable or other person shall be entitled to his costs or expenses for conveying such person to such prison as aforesaid, it shall be lawful for the justice or justices who shall have committed the accused party, or for any justice of the peace in and for the said county, riding, division, or other place of exclusive jurisdiction wherein the offence is alleged in the said warrant to have been committed, to ascertain the sum which ought to be paid to such constable or other person for conveying such prisoner to such gaol or prison, and also the sum which should reasonably be allowed him for his expenses in returning, and thereupon such justice shall make an order (T. 2) upon the treasurer of such county, riding, division, liberty, or place of exclusive jurisdiction, or if such place of exclusive jurisdiction shall be contributory to the county rate of any county, riding, or division, then upon the treasurer of such county, riding, or division respectively, or, in the county of *Middlesex*, upon the overseers of the poor of the parish or place within which the offence is alleged to have been committed, for payment to such constable or other person of the sums so ascertained to be payable to him in that behalf; and the said treasurer or overseers, upon such order being produced to him or them respectively, shall pay the amount thereof to such constable or other person producing the same, or to any person who shall present the same to him or them for payment: provided never-

Conveying
prisoner to
gaol.

Post, p. 83.

Costs
thereof, how
and by whom
paid.
1 J. P. 300.

Post, p. 84.

theless, that if it shall appear to the justice or justices, by whom any such warrant of commitment against such prisoner shall be granted as aforesaid, that such prisoner hath money sufficient to pay the expenses, or some part thereof, of conveying him to such gaol or prison, it shall be lawful for such justice or justices, in his or their discretion, to order such money or a sufficient part thereof to be applied to such purpose.

NOTE.

The constable or person to whom the warrant is directed, must execute it, by conveying the prisoner to the gaol or house of correction mentioned in it, and delivering him to the keeper thereof, who will give him a receipt for the prisoner in the form *infra*, T. 2. Or if the warrant be directed to two or more, any one or more of them may execute it; and the party executing it may, if it be necessary, procure some person to assist him.

As to the constable's expenses in executing the warrant, by conveying the prisoner to gaol:—it will be perceived that there is a list of these expenses at the foot of the gaoler's receipt, in the form *infra*, T. 2; and this being laid before the committing justice, or before some justice of the peace for the county or other district within which the offence is alleged to have been committed, such justice, having examined the constable as to the items, will in his discretion allow such expenses as he may deem reasonable, and the sums he thinks ought to be allowed not only for conveying the prisoner to gaol, and his subsistence on the journey, but also for the constable's expenses in returning. There are cases, however, in which a constable is not entitled to be paid; as for instance, where warrants are executed by the policemen of a borough, or other constables paid by wages or salary for the performance of all their duties;—then of course nothing is to be allowed them for executing the warrant, except for necessary extra expenses, such as necessary carriage hire, or the necessary subsistence of the prisoner, or the like.

There is a proviso at the end of the above section, enabling the committing justice, in his discretion, to order any money found upon the prisoner to be applied to or towards the payment of the expenses of conveying him to prison. The stat. 3 J. 1, c. 10, s. 1, went much further than that, and enacted that if the offender should be of sufficient ability to pay the expenses of his being conveyed to prison, and the charges of such as may guard him thither, he should do so; or if he refused, the justice committing him might, by his warrant,

command the constable of the hundred or township where the offender dwelt, or from whence he should be committed, or where he should have goods within the county, &c., to sell so much of the offender's goods as, in the discretion of the said justice, should be sufficient to pay such charges and expenses, the goods to be appraised by four honest inhabitants of the parish where such goods should be, and the surplus (if any) delivered to the party. 3 J. 1, c. 10, s. 1. The legislature, by the present Act, were not prepared to go so far; but still, as there possibly might be cases in which it might be proper to compel the prisoner to pay these expenses, when he happened not to have sufficient money upon his person at the time of his caption, it was thought advisable not to repeal this statute of James, and it now remains in force, and not at all affected by what is here enacted.

FORM.

(T. 2.)

Gaoler's receipt to the Constable for the Prisoner; and Justice's Order thereon for payment of the Constable's Expenses in executing the Commitment.

I hereby certify, that I have received from W. T., constable of —, the body of A. B., together with a warrant under the hand and seal of J. S. esquire, one of her Majesty's justices of the peace for the [county] of —; and that the said A. B. was [sober, or as the case may be,] at the time he was so delivered into my custody.

P. K.

*Keeper of the house of correction
[or common gaol] at —.*

Constable's expenses:

£ s. d.

<i>For conveying the above A. B. from —</i>	}
<i>to — [by railway] at — per mile -</i>	
<i>For conveying him to and from the railway station - - - - -</i>	}
<i>For subsistence of prisoner whilst in custody after commitment, — days at — per day - - - - -</i>	
<i>For his lodging — nights, at — per night - - - - -</i>	}
<i>Constable — days, at — per day -</i>	
<i>[One] assistant [if necessary] — days, at — per day - - - - -</i>	}
<i>at — per day - - - - -</i>	

Total £ _____

To R. W. esquire, treasurer of the said [county] of —.

Whereas W. T., constable of — in the county of —, hath produced unto me, J. P., one of her Majesty's justices of the peace in and for the said county of —, (wherein the offence hereinafter mentioned is alleged to have been committed), the above receipt of P. K., keeper of the [house of correction] at —: and whereas, in pursuance of the statute in such case made and provided, I have ascertained that the sum which ought to be paid to the said W. T. for conveying the said A. B. from — in the said county of —, to the said house of correction is —, and that the reasonable expenses of the said W. T. in returning will amount to the further sum of —, making together the sum of —: These are therefore to order you, as such treasurer of the said county of —, to pay unto the said W. T. the said sum of —, according to the form of the statute in such case made and provided, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this — day of —, 18—.

J. P.

Received the — day of —, 18—, of the treasurer of the [county] of —, the sum of — being the amount of the above order.

£—.

Defendant
entitled to
copies of the
depositions.
1 J. P. 297.

XXVII. And be it enacted, that at any time after all the examinations aforesaid shall have been completed, and before the first day of the assizes or sessions or other first sitting of the court at which any person so committed to prison or admitted to bail as aforesaid is to be tried, such person may require, and shall be entitled to have, of and from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed, on payment of a reasonable sum for the same, not exceeding at the rate of three halfpence for each folio of ninety words.

NOTE.

The examinations must be completed, and the defendant finally committed or admitted to bail, before he is entitled to have copies of the examinations against him. This clause is thus far the same, and nearly in the same words, as stat. 6 & 7 W. 4, c. 114, s. 3; and upon that statute it was holden that a prisoner, merely remanded for re-examination, had no right to copies of the depositions as far as they had then gone; he

was not entitled to them until the whole of the examinations were completed. *Exp. Fletcher*, 13 *Law J.* 67, m. *S. C. nom. R. v. Lord Mayor of London*, 5 *Q. B.* 555. And it has since been decided that this section extends only to cases where the defendant has been committed or holden to bail to take his trial. *Ex parte Humphreys*, 15 *Law Times*, 142; 14 *Shaw's J. P.* 286, 340.

The stat. 6 & 7 W. 4, c. 114, s. 3, also makes provision for the judge at the assizes, or the person presiding at the court where the prisoner is to be tried, allowing him to have copies of the depositions, where he has not applied for them before the first day of the assizes or sessions, and the trial may be put off on that account. But that provision is not affected by the present Act.

It is objected (S.), that "a most remarkable and unfortunate oversight has been committed by the framer of this clause;" and the learned objector then proceeds to point out,—not an oversight or mistake in this clause, for that is not pretended,—but that in the repeal clause, sect. 34, the statute 6 & 7 Will. 4, c. 114, s. 3, is repealed, and as that extends as well to depositions before coroners as to depositions before magistrates, a party committed under a coroner's warrant for murder or manslaughter is now deprived of his right to demand copies of the depositions. It would be as well, perhaps, if the gentleman had read with attention the part of the 34th section to which he alludes, and the 3rd section of stat. 6 & 7 Will. 4, c. 114, before he made the objection. This latter statute is intituled "An Act for enabling persons indicted of felony to make their defence by counsel," and the first two sections relate to the employment of counsel by defendants; the 3rd section enacts, that "all persons who after the passing of the Act shall be held to bail or committed to prison for any offence" should be entitled to "copies of the examination of the witnesses respectively upon whose depositions they have been so held to bail or committed to prison." Now, in the first place, it is exceedingly doubtful whether that Act at all extends to coroners' inquests; the coroner cannot bail, and the party against whom the inquisition is found is not committed on the depositions, but upon the inquisition. Besides, the 34th section only repeals so much of the stat. 6 & 7 Will. 4, c. 114, "as relates to the right of parties charged with offences to have copies of the depositions or examinations against them," which evidently relates only to depositions before magistrates; for there is no charge made against any person before a coroner's inquest, but the jury find their inquisition according to the evidence, without any previous information or charge against any person whatever.

I have now noticed the whole of this gentleman's objections

to the first of these Acts; and I think I have satisfactorily proved to my readers, that there is not the slightest ground for any one of them.

Forms in
schedule.

XXVIII. And be it enacted, that the several forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

NOTE.

This merely legalizes the forms here given, but does not prevent justices from adopting any other forms they may think proper. In prudence, however, it may be advisable to adopt the forms which are thus legalized.

Metropolitan
police magis-
trates and
stipendiary
magistrates
may act
alone.

XXIX. And be it enacted, that any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough or place, and sitting at a police court or other place appointed in that behalf, shall have full power to do alone whatsoever is authorized by this Act to be done by any one or more justice or justices of the peace; and that the several forms in the schedule to this Act contained may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the tenth year of the reign of his late Majesty king George the Fourth, intituled "An Act for improving the police in and near the metropolis," or in an Act passed in the third year of the reign of her present Majesty, intituled "An Act for further improving the police in and near the metropolis," or in an Act passed in the same year of the reign of her present Majesty, intituled "An Act for regulating the police courts in the metropolis," or in an Act passed in the fourth year of the reign of her present Majesty, intituled "An Act

10 G. 4, c. 44.

2 & 3 Vict.
c. 47.

2 & 3 Vict.
c. 71.
3 & 4 Vict.
c. 84.

for better defining the powers of justices within the metropolitan police district."

XXX. And be it enacted, that it shall be lawful for the lord mayor of the city of *London*, or for any alderman of the said city, for the time being, sitting at the Mansion House or Guildhall justice rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the police in the city of *London*." The lord mayor, or any alderman of London, may act alone.
Nothing to affect powers, &c. contained in 2 & 3 Vict. c. 94.

XXXI. And be it enacted, that the chief magistrate of the metropolitan police court at *Bow Street* for the time being shall be a justice of the peace of and for the county of *Berks*, if his name be inserted in the commission of the peace for that county, without possessing the qualification by estate required by law in that behalf, and without taking any oath of qualification. Chief magistrate of Bow Street may be a justice for Berks without qualification.

XXXII. And be it enacted, that the town of *Berwick-upon-Tweed* shall be deemed to be within *England* for all the purposes of this Act; but nothing in this Act shall be deemed or taken to extend to *Scotland* or *Ireland*, or to the Isles of *Man*, *Jersey*, or *Guernsey*, save and except the several provisions respectively hereinbefore contained respecting the backing of warrants; and also nothing in this Act shall be deemed to alter or affect the jurisdiction or practice of her Majesty's court of Queen's Bench. Act not to be extended to Scotland, Ireland, &c.

XXXIII. And be it enacted, that this Act shall commence and take effect on the second day of October, in the year of our Lord one thousand eight hundred and forty-eight. Commencement of the Act.

Repeal of
Acts and
parts of Acts;
viz.

- XXXIV. And be it enacted, that the following statutes and parts of statutes shall, from and after the day on which this Act shall commence and take effect, be and the same are hereby repealed; (that is to say), a certain Act of parliament made and passed in the thirteenth year of the reign of his late Majesty king George the Third, intituled "An Act for the more effectual execution of criminal laws in the two parts of the united kingdom;" and a certain other Act made and passed in the twenty-eighth year of the reign of his said late Majesty king George the Third, intituled "An Act to enable justices of the peace to act as such in certain cases out of the limits of the counties in which they actually are;" and so much of a certain other Act made and passed in the forty-fourth year of the reign of his said Majesty king George the Third, intituled "An Act to render more easy the apprehending and bringing to trial offenders escaping from one part of the united kingdom to the other, and also from one county to another," as relates to the apprehension of offenders escaping from *Ireland* into *England*, or from *England* into *Ireland*, and to the backing of warrants against such offenders; and so much of a certain other Act made and passed in the forty-fifth year of the reign of his said Majesty king George the Third, intituled "An Act to amend two Acts of the thirteenth and forty-fourth years of his present Majesty, for the more effectual execution of the criminal laws, and more easy apprehending and bringing to trial offenders escaping from one part of the united kingdom to the other, and from one county to another," as relates to the bailing of offenders escaping from *Ireland* into *England*, or from *England* into *Ireland*; and also a certain other Act made and passed in the fifty-fourth year of the reign of his said late Majesty king George the Third, intituled "An Act for the more easy apprehending and trying of offenders escaping from one part of the united kingdom to the other;" and also a certain other Act made and passed in the first year of the reign of his late Majesty king George the Fourth, intituled "An Act to amend an Act made in the twenty-eighth year of the

13 G. 3, c. 31.

28 G. 3, c. 49.

44 G. 3, c. 92,
ss. 3, 4.

45 G. 3, c. 92,
ss. 5, 6.

54 G. 3, c.
186.

1 & 2 G. 4,
c. 63.

reign of king George the Third, intituled 'An Act to enable justices of the peace to act as such in certain cases out of the limits of the counties in which they actually are;' and so much of a certain other Act made and passed in the third year of the reign of his said late Majesty king George the Fourth, intituled "An Act for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated," as relates to the form of recognizances, and to the notice to be given to persons acknowledging the same; and so much of a certain other Act made and passed in the said seventh year of the reign of his said late Majesty king George the Fourth, intituled "An Act to enable commissioners for trying offences upon the sea, and justices of the peace, to take examinations touching such offences, and to commit to safe custody persons charged therewith," as relates to the taking of such examinations, and the commitment of persons so charged by justices of the peace; and so much of a certain other Act made and passed in the said seventh year of the reign of his said late Majesty king George the Fourth, intituled "An Act for improving the administration of criminal justice in England," as relates to the taking of bail in cases of felony, and to the taking of the examinations and informations against persons charged with felonies and misdemeanors, and binding persons by recognizance to prosecute or give evidence; and so much of a certain Act made and passed in the sixth year of the reign of his late Majesty king William the Fourth, intituled "An Act for preventing the vexatious removal of indictments into the court of King's Bench, and for extending the provisions of an Act of the fifth year of king William and queen Mary, for preventing delays at the quarter sessions of the peace, to other indictments, and for extending the provisions of an act of the seventh year of king George the Fourth, as to taking bail in cases of felony," as relates to the taking of bail in cases of felony; and so much of a certain other Act made and passed in the seventh year of the reign of his said late Majesty king William the Fourth, intituled "An Act for enabling persons indicted for felony to make their

3 G. 4, c. 46,
5. 4.

7 G. 4, c. 38,
in part.

7 G. 4, c. 64,
s. 1, 2, 3.

5 & 6 W. 4,
c. 33, s. 3.

6 & 7 W. 4,
c. 114, s. 3.
6 & 7 W. 4,
c. 115.

defence by counsel or attorney," as relates to the right of parties charged with offences to have copies of the depositions or examinations against them ; and all other Act or Acts or parts of Acts which are inconsistent with the provisions of this Act ; save and except so much of the said several Acts as repeal any other Act or parts of Acts, and also except as to proceedings now pending to which the same or any of them are applicable.

Act may be
amended,
&c.

XXXV. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of parliament.

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OF

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11 & 12 VICTORIA, CAP. 43.

An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Summary Convictions and Orders.
[14th August, 1848.]

SECTION 1. WHEREAS it would conduce much to the Preamble. improvement of the administration of justice within *England and Wales*, so far as respects summary convictions and orders to be made by her Majesty's justices of the peace therein, if the several statutes and parts of statutes relating to the duties of such justices in respect of such summary convictions and orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by such positive enactment: be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all cases where an information shall be laid before one or more of her Majesty's justices of the peace Summons on information, 1 J. P. 369. for any county, riding, division, liberty, city, borough, or place within *England or Wales*, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and or complaint. also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons (A.) directed to such Post, p. 106.

How served.
1 J. P. 300,
361.

Proviso.

Proviso.

person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid, shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons: provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*: provided also, that no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing, to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

NOTE.

It may be necessary to apprise the reader, that throughout this Act of parliament, a marked distinction is in many respects made between a conviction and an order. The conviction is for some offence, which a justice or justices of the peace

is or are empowered by some Act of parliament to hear and adjudicate upon in a summary way, and to punish by fine or imprisonment, &c. ; the order is, where a justice or justices of the peace is or are empowered by some Act of parliament, upon the complaint of a party, to hear and determine a certain matter between him and another person, and thereupon to make an order for the payment of money, or for the doing of some other thing, if the decision should be in favour of the complaining party. In the case of a proceeding for an offence, it is commenced by laying an information for it before a justice of the peace for the county or other district within which the offence is alleged to have been committed ; where an order is sought to be obtained, the first proceeding is by making a complaint before a justice ;—in the one, the first proceeding is called an information, in the other, a complaint. The next proceeding is to bring the party against whom the information is laid or complaint made, before the justices for the purpose of the case being heard, the witnesses examined, &c. ; and this is effected in the same manner in substance in both cases, namely, by summons or warrant. If the defendant appear, both parties are heard, and their witnesses examined ; or if the defendant do not choose to appear either by himself or some person for him, after being duly summoned, the hearing may take place in his absence ; and the justice or justices, after hearing what is alleged and proved on the one side and the other, decide for or against either of the parties. In the case of an information, the justice or justices either convict the defendant, and adjudicate the penalty or punishment and costs, or they acquit him ; in the case of a complaint, they either make the order required, or dismiss the complaint. In either case, the adjudication or order is executed, if necessary, by a warrant of distress or of commitment, according to circumstances. And here it may be necessary to remark, that this statute extends to all such summary proceedings had on or after the 2nd October, 1848, no matter whether the matter of the information or complaint arose before or after that time.

The first *quasi* process upon such information or complaint, is a summons issued by the justices of the peace before whom such information is laid or complaint made, under his hand and seal. And it may be necessary to mention that every such information may be laid or complaint made before any one justice of the peace within whose jurisdiction the matter of such information or complaint may have arisen, even where the conviction or order is required, by the statute on which it is framed, to be by two justices ; *sect. 29, post* ; and such justice may accordingly issue the summons. The summons is directed to the defendant. Formerly it might be directed, either to the defendant, or to the constable who was to serve it, and in practice it was usually directed to the constable ; in

which latter case a copy of it merely was served upon the defendant. But as the defendant is often an illiterate person, and the summons, being directed to the constable, might not appear to the defendant to require him personally to do any thing, and he might therefore be deceived in respect of its effect, and the consequence of not attending to it; it was therefore thought necessary, by this statute, to require that the summons should in all cases be directed to the defendant himself, showing at once what is required of him. For this purpose also, it states the time and place at which he is required to attend, either before the same justices who issued the summons, or before such other justice or justices of the same district as might then be there; and in order that he may come prepared to make his defence, it states the nature of the charge or complaint which has been made against him.

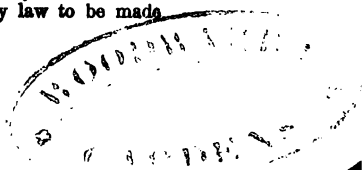
This summons may be served by the constable or other person to whom it has been delivered for that purpose, either personally upon the defendant, or by leaving it with some person for him at his last or most usual place of abode; and the constable, in leaving it, should take care to give it to the person there most likely to deliver it to the party, as to his wife or servant, or, if he be a lodger, to his landlord or the like, in order that by appearing in obedience to it, he may prevent the necessity of a warrant being issued for his apprehension, or of the case being heard *ex parte* in his absence. Formerly it was deemed necessary, or at least prudent, to serve it personally, to warrant the magistrates in proceeding *ex parte* in case of his non-attendance. Now, however, in all cases it may be left for him with some person at his last or most usual place of abode; and as at the time appointed for the hearing, if the defendant do not appear, it is discretionary with the magistrates whether they will proceed *ex parte* or issue their warrant to apprehend him, they will not of course proceed *ex parte* unless from the nature of the service they can fairly infer that the summons came to the defendant's hands, and in sufficient time to enable him to attend, if he were inclined to do so. And to enable the justices to judge thus of the manner of service, the constable or other person who served the summons is required by this section to attend before them, at the time and place mentioned in the summons, to depose if necessary to the manner of the service. In some cases hereafter, it may possibly be required by the statute creating an offence, &c., or regulating the summary prosecution for it, that the summons shall be served a certain number of days before the hearing; and in such cases the directions of the statute, in this respect, must be strictly complied with. Where a statute required that the summons should be served "ten days at least" before the time of hearing, and it was served on the 20th of September, and the conviction was on the 30th, the defendant not appearing: the court held that the "ten

days at least" meant ten days exclusive of the day of the service and of the day of the hearing, and that therefore on the 30th the magistrates had no jurisdiction to convict; and that having issued a distress warrant upon the conviction, under which the defendant's goods were taken, they were liable to an action of trespass. *Mitchell v. Foster*, 9 *Law J.*, 95 *m.* But these observations must be understood as having reference to statutes hereafter to be passed; for by the next section of the present statute (*post*, p. 101), it is enacted that a justice of the peace may proceed *ex parte*, in all cases where it is proved that the summons has been served "a reasonable time" before the time therein appointed for his appearance, and he has not appeared. And this extends not only to offences, &c. already created, but also to all acts hereafter to be passed containing no provision to the contrary.

By a proviso in this section, the statute in this respect does not extend to cases where applications are made for orders, which the justices by law grant *ex parte*, such as orders of removal; in those cases no summons issues to the opposite parties, but the order is always made in their absence; and if they wish to contest the propriety of it, they must do so upon appeal.

There is another proviso, also, in this section, that no objection shall be taken to the summons, for any defect in form or substance, or for any variance between it and the evidence adduced. Formerly, in cases where the information was not in writing, it was a very common practice for defendants, or those who appeared for them, to insist that the summons was in substance the information, and that they were entitled to take such objections to it, in form or in substance, or for variance between it and the evidence, as they might take to the information if it were in writing and filed; and this was in many cases insisted upon with such earnestness and confidence, that the magistrates have yielded to it, although in law there was really no ground or pretence for the right claimed. This proviso was therefore introduced, for the purpose of removing all doubt upon the subject. The same provision is also made as to the information or complaint; no objection can be made to either of them for any defect in form or substance, or for variance between them and the evidence. But as the variance in such a case may be so great as to vary the nature of the case, and the defendant may have thereby been deceived or misled, it was thought necessary to give the magistrates a discretionary power, in such a case, to adjourn the hearing to a future day, on such terms as they should think fit. See *sect. 9, post*.

It is objected (S.), that after the proviso that nothing herein shall oblige a justice to issue a summons in any case where the application for any order of justices is by law to be made



ex parte, it should have been expressly provided that upon non-appearance no warrant shall issue in such a case, "which it may do as this and the next clause now stand." It is not very easy to understand what this gentleman would be at: if he mean that a warrant may be issued in the first instance, I beg to say he is mistaken, for such a warrant cannot be granted upon a complaint for an order, being confined by the next section entirely to informations for offences punishable on conviction; and if he mean that the justice may issue a warrant upon non-appearance to a summons, upon an *ex parte* application, he seems to be wrong again, for the only instances of orders obtained *ex parte*, namely, orders of removal, and lunatic orders, are not within this statute at all. See sect. 35, *post*.

It is objected (S.) also, that whilst this section disallows of objections for defects in informations, &c. it is only in cases of variance that it gives the justices a power to adjourn. But the reason is, that it is only in cases of variance that an adjournment can be at all necessary to the defendant; he does not require an adjournment in case of a mere defect. But this gentleman finds great fault that a power is not here given to the justices to amend the information, complaint, or summons. As to the information and complaint, they need not be in writing; and if not in writing, perhaps it would puzzle the ingenuity of this gentleman to say how they should be amended; and as to the summons, the defendant either appears to it, or he does not; if he appear, he waives all objection to it; if he do not appear, there can be no application to amend.

FORM.

(A.)

Summons to the Defendant, upon an Information or Complaint.

To A. B. of —, [labourer].

Whereas information hath this day been laid [or, complaint hath this day been made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that you [here state shortly the matter of the information or complaint]: These are therefore to command you, in her Majesty's name, to be and appear on — at — o'clock in the forenoon, at —, before such justices of the peace for the said county as may then be there, to answer to the said information [or, complaint], and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.
J. S. (L. S.)

II. And be it enacted, that if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served what shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant (B.) to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place, to answer to the said information or complaint, and to be further dealt with according to law; or, upon such information being laid as aforesaid for any offence punishable on conviction, the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant (C.) for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place, to answer to the said information, and to be further dealt with according to law; or if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that

If summons
be not
obeyed, war-
rant.

J. P. 361.

Post, p. 104.

Or warrant
in the first
instance.

Post, p. 104.

Or if sum-
mons not
obeyed, and
it have been
duly served,
the justices
may proceed
ex parte.

such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed *ex parte* to the hearing of such information or complaint, and to adjudicate thereon as fully and effectually, to all intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

NOTE.

By this section a warrant may now be issued in two cases,—namely, either where the defendant, being served with a summons, neglects to attend at the time and place appointed, or where the justice, before whom an information is lodged, thinks it necessary to issue a warrant in the first instance, without previously issuing a summons. This is a material alteration in the law upon this subject. Formerly, before the passing of this statute, there was no general law authorizing a justice of the peace to issue a warrant to compel an appearance in cases of summary convictions or orders; such a warrant could not be issued, unless the statute creating the offence, or regulating the prosecution for it, specially authorized the justice to issue it; and even in those cases, it was seldom issued in the first instance, unless in cases where it appeared likely that the party would abscond, as soon as he heard that an information had been laid against him. 1 *Arch. J. P.* 301.

Where therefore a summons has issued, either upon information or complaint, and the defendant fails to appear at the time and place mentioned in such summons, the justice or justices present may require proof of the service of the summons; and if it be proved that it was served, either personally on the defendant, or by leaving it for him at his last or most usual place of abode, a reasonable time before, the justice, or any one of the justices then present, may issue his warrant to apprehend him. What is to be deemed a reasonable time, is for the justice to determine, with reference to the circumstances of each particular case. If it appear that a reasonable time had not elapsed, or if there be no proof of the service of the summons, the justice should not issue his warrant; all he can do is to issue another summons, if required, attendable at some future time. If on the other hand, the defendant attend at the time and place mentioned in the summons, the time and manner of service become immaterial, and no proof of either is necessary; it being a general rule that the appearance of a defendant cures every defect in the summons, and in the time and manner of serving it.

Or in case of an information for an offence, punishable on summary conviction, the justice, before whom it is laid, may, if he think fit, issue his warrant for apprehending the defendant in the first instance, without issuing any previous summons. This power he will exercise at his discretion; but no doubt he will not thus issue his warrant, unless he is well satisfied from circumstances that it would be useless to issue a summons, or that the service of a summons would induce the defendant to abscond. And it is necessary to remark, that it is only in cases of informations for offences punishable on summary conviction that a warrant can thus be issued in the first instance: upon a complaint, where the justice is required to make an order merely, he has no authority to issue a warrant, except in cases where a summons has been served upon the defendant, and he has failed to appear at the time and place thereby appointed. And even in the case of an information, the matter of it must be substantiated by oath or affirmation, before the justice can thus issue his warrant in the first instance.

But in either case,—of information or complaint,—where a summons has issued, if the defendant do not appear at the time and place mentioned in the summons, and it be proved to the justices there assembled, upon oath or affirmation, that such summons was “duly served” upon the defendant a “reasonable time” before the time so appointed, they may proceed to hear the evidence in support of such information or complaint *ex parte*, in the absence of the defendant. What shall be deemed a due service of the summons in this respect, will be for the justices present to judge. Formerly it was deemed necessary that the service should be personal, to warrant a magistrate to act thus *ex parte*; see *R. v. Hall*, 6 D. & R. 84; but by this statute the service may be either personal, or by leaving the summons for the party, with some person at his last or usual place of abode, and the word “duly” cannot be holden to mean more than this. Still, however, the justices, before they proceed thus against a man in his absence, will no doubt require proof of such a service, from which they may fairly infer that the summons came to the party’s hands or knowledge a reasonable time before that appointed for his appearance. What is a reasonable time, is for the justices to determine. *Vide supra*. This subject will be further considered hereafter, under the 13th section of this statute.

It is objected (S.), that much doubt will be created as to whether the words here “served upon such party” do not mean personal service. This is rather a strange objection, and shows the little attention the objector has paid to the Act, in his perusal of it; for by the 1st section, this very service upon the party is fully defined, thus, that every such summons shall be served by a constable, &c. “upon the person to whom it is directed, by delivering the same to the party personally, or by

leaving the same with some person for him at his last or most usual place of abode." That service upon a party, does not mean personal service, is familiar to every lawyer; for even in affidavits of service of a declaration in ejectment, the deponent is obliged to *swear* that he served it upon the tenant in possession, by delivering it to—perhaps his wife, or other person.

FORMS.

(B.)

Warrant where the summons is disobeyed.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas on — last past information was laid [or, complaint was made] before the undersigned [one] of her Majesty's justices of the peace in and for the said county of —, for that A. B. [&c., as in the summons]: And whereas I then issued my summons unto the said A. B., commanding him, in her Majesty's name, to be and appear on —, at — o'clock in the forenoon, at —, before such justices of the peace for the said county as might then be there, to answer to the said information [or complaint], and to be further dealt with according to law: And whereas the said A. B. hath neglected to be or appear at the time and place so appointed in and by the said summons, although it hath now been proved to me upon oath that the said summons hath been duly served upon the said A. B.: These are therefore to command you, in her Majesty's name, forthwith to apprehend the said A. B., and to bring him before some one or more of her Majesty's justices of the peace in and for the said county, to answer to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid,
J. S. (L. S.)

(C.)

Warrant in the first instance.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas information hath this day been laid before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that A. B. [here state shortly the matter of the information]; and oath being now made before me substantiating the matter of such information, these are therefore to command you, in her Majesty's

name, forthwith to apprehend the said A. B., and to bring him before some one or more of her Majesty's justices of the peace in and for the said county, to answer to the said information, and to be further dealt with according to law.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.
J. S. (L. S.)

III. And be it enacted, that every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal or hands and seals of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the parish or other district within which the same is to be executed, without naming him, or to such constable and all other constables within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last mentioned county or district; and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued, and it shall order the constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more justice or justices of the peace (as the case may require), of the same county, riding, division, liberty, city, borough, or place, to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough, or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough,

Warrant, in what form.

1 J. P. 128, 283.

1 J. P. 284.

Where and how executed.

- 1 J. P. 128. or place, without having such warrant backed as herein-after mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer for any parish, township, hamlet, or place situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the parish, township, hamlet, or place for which he shall be such constable, headborough, tithingman, borsholder, or other peace officer; and such of the provisions and enactments contained in a certain Act of parliament made and passed in this present session of parliament intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within *England* and *Wales*, with respect to persons charged with indictable offences," as to the backing of any warrant, and the indorsement thereon by a justice of the peace or other officer authorizing the person bringing such warrant, and all other persons to whom the same was originally directed, to execute the same within the jurisdiction of the justice or officer so making such indorsement, as are applicable to the provisions of this Act, shall extend to all such warrants, and to all warrants of commitment issued under and by virtue of this Act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this Act: Provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this Act, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the
- In what cases, and how backed.
- 11 & 12 Vict. c. 42.
- Proviso.

informant or complainant as hereinafter mentioned ; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such, that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned : Provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances ; and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

1 J. P. 364.

Post, p. 109.

Post, p. 110.

Proviso.

Post, p. 111.

NOTE.

It has already been observed that until the passing of this Act, there was no general law enabling a justice of the peace to issue a warrant to compel the appearance of the defendant, in case of an information or complaint. This statute, therefore, having established the practice generally, it was necessary to regulate the form of the warrant, and the manner of executing it, &c., which is very nearly the same as in the case of a warrant to apprehend for an indictable offence.

It must be under hand and seal ; and it may be in all cases

issued under the hand and seal of one justice, even where the hearing must by law be before two or more justices. *Sect. 29, post.*

It may be directed to any person by name; and if such person be a constable or other peace officer, within the jurisdiction of the justice granting the warrant, he must execute it, and is punishable for not doing so, and he may execute it at any place within the jurisdiction; but if he be not a constable or peace officer, although he may execute it, at any place within the justice's jurisdiction, he is not compellable to do so, nor can he be punished if he do not. Or it may be directed to the constable of the particular parish or district in which it is to be executed, without specially naming him, and he is bound to execute it within his parish or district. Or it may be directed to all constables within the jurisdiction of the justice, or to the constable of a particular parish or district and to all constables and peace officers within the county or other jurisdiction of the justice, without naming any,—in either of which cases any one or more of such constables or peace officers, whether headboroughs, tithingmen, borsholders, &c., or however else they may be designated, may execute it at any place within the jurisdiction of the justice, (although it may happen to be out of the parish or district for which such peace officer may have been appointed,) in the same manner as if it were directed to him by name.

The statute requires that the warrant should state shortly the matter of the information or complaint; and which may be done in the same form as in a conviction or order. If the justice should feel any difficulty in this respect, he may find the forms under their proper heads, in the first two volumes of Archbold's "Justice of the Peace."

This warrant may be executed, by apprehending the defendant, at any place within the justice's jurisdiction; or, in case of fresh pursuit, (that is to say, where the offender escapes out of the jurisdiction of the justice into an adjoining county or place, whilst the constable or person having the warrant is in actual pursuit of him,) the constable may follow him into the adjoining county or place, to the distance of seven miles from the border or confines of the jurisdiction, without getting the warrant backed.

Or where the constable is not in fresh pursuit, or in fresh pursuit beyond the seven miles here mentioned, and he wishes for authority to execute his warrant out of the jurisdiction of the justice granting it, he must get it backed by a justice of the county, &c., in which he seeks to execute it, in the manner mentioned *ante*, pp. 106, 32, the provisions as to the backing of warrants in the first of these Acts, (*ante*, pp. 32—43), being extended to the warrants under this Act, in as full a manner as if the clauses upon the subject were here introduced and re-enacted.

It was a frequent custom, before this statute, in all cases where a warrant was specially allowed to be issued, to make all manner of objections to it, particularly when there was no information or complaint in writing, the defendant or his legal advisers insisting that the warrant was *quasi* an information, and was open to the same objections. But as such objections were entirely beside the merits of the case, and groundless in point of law, it was thought necessary in this Act to provide that no objection at all should be made to this warrant, for any defect in form or substance,—and no objection for any variance between it and the evidence, unless it appeared to the justices that the variance was such that the defendant was deceived or misled by it, in which case the justices may adjourn the hearing to some future day, to give him an opportunity to prepare his defence to the charge as it appears in evidence; and in the meantime the justices will commit the defendant to safe custody, or discharge him on his recognizance (E.) *Post*, p. 110. with or without sureties, at their discretion; and afterwards if he do not appear at the time appointed, his recognizance, with an indorsement (F.) of his non-appearance upon it, will be sent *Post*, p. 111. to the clerk of the peace, and estreated; and the justices or one of them may again issue a warrant against him to compel his appearance.

FORMS.

(D.)

Warrant of Committal for safe custody, during an adjournment of the hearing.

To W. T., constable of —, and to the keeper of the [house of correction] at —.

Whereas on — last past, information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of — for that [&c., as in the summons]: And whereas the hearing of the same is adjourned to the — day of — instant at — o'clock in the forenoon, at —, and it is necessary that the said A. B. should in the meantime be kept in safe custody: These are therefore to command you the said constable, in her Majesty's name, forthwith to convey the said A. B. to the [house of correction] at —, and there deliver him into the custody of the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said house of correction, and there safely keep him until the — day of — instant, when you are hereby required to convey and have him the said A. B., at the time and place to which the said hearing is so adjourned

as aforesaid, before such justices of the peace for the said [county] as may then be there, to answer further to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal, this — day of — in the year of our Lord —, at —, in the [county] aforesaid.
J. S. (L. S.)

(E.)

Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with.

Be it remembered, that on — A. B. of —, labourer, and L. M. of —, grocer, personally came before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, and severally acknowledged themselves to owe to our sovereign lady the Queen the several sums following; (that is to say), the said A. B. the sum of — and the said L. M. the sum of — of good and lawful money of Great Britain, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if he the said A. B. shall fail in the condition indorsed.

Taken and acknowledged, the day and }
year first above mentioned, at —, }
before me, J. S.

The condition of the within written recognizance is such, that if the said A. B. shall personally appear on the — day of — instant at — o'clock in the forenoon at —, before such justices of the peace for the said [county] as may then be there, to answer further to the information [or complaint] of C. D. exhibited against the said A. B., and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

Notice of such Recognizance to be given to the Defendant and his Surety.

Take notice, that you A. B. are bound in the sum of —, and you L. M. in the sum of —, that you A. B. appear personally on — at — o'clock in the forenoon, at —, before such justices of the peace for the said county as shall then be there, to answer further to a certain information [or complaint] of C. D., the further hearing of which was adjourned to the said time and place; and unless you appear accordingly, the recognizance entered into by you A. B. and by L. M. as your surety, will forthwith be levied on you and him.

Dated this — day of — 185—.

J. S.

(F).

Certificate of Non-appearance to be indorsed on Defendant's Recognizance.

I hereby certify, that the said A. B. hath not appeared at the time and place in the said condition mentioned, but therein hath made default, by reason whereof the within-written recognizance is forfeited.

J. S.

Indorsement, in backing a Warrant.

Whereas proof upon oath hath this day been made to wit. } before me, one of her Majesty's justices of the peace for the said [county] of —, that the name of J. S. to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned; I do therefore hereby authorize W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may lawfully be executed, and also all constables and other peace officers of the said [county] of —, to execute the same within the said last mentioned [county].

Given under my hand this — day of — 185—.

J. L.

IV. And be it enacted, that in any information or complaint, or the proceedings thereon, in which it shall be necessary to state the ownership of any property belonging to or in the possession of partners, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another or others, as the case may be; and whenever in any information or complaint, or the proceedings thereon, it shall be necessary to mention, for any purpose whatsoever any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in manner aforesaid; and whenever in any such information or complaint, or the proceedings thereon, it shall be necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of any county, riding, division, liberty, city, borough, or place, or of any materials for the making, altering, or repairing of the same, they may be therein described as

Description of the property of partners, &c.

Property of counties, how described.

Property in goods provided for the poor, how described.	the property of the inhabitants of such county, riding, division, liberty, city, borough, or place respectively : and all goods provided by parish officers for the use of the poor may in any such information or complaint, or the proceedings thereon, be described as the goods of the churchwardens and overseers of the poor of the parish, or of the overseers of the poor of the township or hamlet, or of the guardians of the poor of the union to which the same belong, without naming any of them ;
Property in materials for parish roads, how described.	and all materials and tools provided for the repair of highways at the expense of parishes or other districts in which such highways may be situate may be therein described as the property of the surveyor or surveyors of such highways respectively, without naming him or them ;
Property in materials for turnpike roads, gates, &c. how described.	and all materials or tools provided for making or repairing any turnpike road, and buildings, gates, lamps, boards, stones, posts, fences, or other things erected or provided for the purpose of any such turnpike road, may be described as the property of the commissioners or trustees of such turnpike road, without naming them ;
Property of commissioners of sewers, how described.	and all property of the commissioners of sewers of any district may be described as the property of such commissioners, without naming them.

NOTE.

Formerly much difficulty arose in prosecutions for offences in respect of property belonging to partners, joint tenants, parceners, or tenants in common, it being then necessary to state the names of all the persons jointly interested ; and if any one of them were omitted or misnamed, the accused party was entitled to be acquitted. Difficulties also were experienced in describing the ownership of works and buildings repaired at the expense of a county, &c., and of the materials for the repair of the same,—of goods provided for the poor by parish officers,—of materials and tools provided for the repair of parish roads,—of the like materials for the repair of turnpike roads, and of the buildings, gates, lamps, posts, &c. belonging to them,—and also of the property of the commissioners of sewers of any district. These difficulties were remedied, as respected indictments, by stat. 7 G. 4, c. 64, ss. 14—18, in the same manner as is provided by the above section ; but the same difficulties being still allowed to exist in all other cases, it was thought advisable to remove them with respect to informations

and complaints determinable in a summary way by justices of the peace, and which is effected by this section, in manner above mentioned.

V. And be it enacted, that every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough, or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring may have been committed.

Punishment
and prosecution of
aiders,
abettors, &c.
2 J. P. 102.

NOTE.

In Peel's Acts, (7 & 8 G. 4, c. 29, s. 62; c. 30, s. 31,) there are clauses inflicting the same punishment on those who aid, abet, counsel or procure the commission of the offences in those Acts, punishable upon summary conviction, as on those who actually commit the offences. But as those clauses related only to offences in the nature of larceny and malicious mischief, and there was no general provision in any statute on the subject, it was thought right in the present statute to provide generally for the punishment of those who aid and abet in the commission of any offence punishable on summary conviction, and also of those who, before the commission of the offence, counsel or procure the commission of it, and to provide for the manner in which they shall be proceeded against.

It may be necessary to mention, that in these cases, it must be proved that the principal offence was actually committed; counselling a man to commit it, if it be not afterwards actually committed, is not an offence within this section. Therefore, whether the person, against whom an information is laid for aiding, abetting, counselling or procuring the commission of any such offence, be tried alone, or with the principal, the first thing to be proved is, that the principal offence was actually committed, and then the prosecutor must prove the offence of aiding or counselling, &c. And in cases where the information is in writing, the offence of the principal is first stated, and then the offence of the aider or counsellor, whether the latter be tried alone, or with the principal.

It is objected (8.), that this section introduces a novelty into the summary jurisdiction of justices. This is a mistake; in all offences punishable on summary conviction by Peel's Acts, (7 & 8 Geo. 4, cc. 29 and 30,) the person who aids, abets, counsels, or procures the commission of the offence, is made liable to the same punishment as the person who actually commits it. And Peel's Acts have been found so efficient in this respect, that it was deemed advisable to extend this provision to all offences punishable on summary conviction.

The following may be the

FORMS.

Information against an Aider or Abettor.

After stating the offence against the principal, including the "*contrary to the form,*" &c., charge the aider thus: "*And that C. D. of —, labourer, was then and there present, [maliciously" or as the statute may be] "aiding and abetting the said A. B. to do and commit the said offence; contrary to the form of the statute in such case made and provided. Wherefore the said J. N. prayeth,*" &c.

Information against a Counsellor or Procurer.

After stating the offence against the principal, including the "*contrary to the form,*" &c., charge the counsellor or procurer thus: "*And that C. D. of —, labourer, before the said offence was committed as aforesaid, did [maliciously" or as the statute may be] "counsel and procure the said A. B. to do and commit the said offence; contrary to the form of the statute in such case made and provided. Wherefore the said J. N. prayeth,*" &c.

Provisions of former Act as to justices in one county, &c., acting for another, to extend to this Act.
Section 5.

Section 6.

VI. And be it enacted, that such of the provisions and enactments in the Act aforesaid made and passed in this present session of parliament, intituled "*An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to persons charged with indictable offences,*" whereby a justice of the peace for one county, riding, division, liberty, city, borough, or place, may act for the same whilst residing or being in an adjoining county, riding, division, liberty, city, borough, or place, of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division, or

liberty, may act as such within any city, town, or precinct next adjoining thereto or surrounded thereby, being a county of itself or otherwise having exclusive jurisdiction, as are applicable to the provisions of this Act, shall be deemed to be incorporated into this Act, and to extend to all acts required of or to be performed by justices of the peace under or by virtue of this Act, in as full and ample a manner as if the said provisions and enactments were here repeated and made parts of this Act.

NOTE.

This is as necessary, in proceedings upon informations and complaints, in the cases of summary convictions and orders, as in the case of indictable offences. It often happens that the petty sessions for a division of a county or riding are holden in an adjoining city or borough, which is either a county of itself, or has exclusive jurisdiction; and the justices of the county, &c. there assembled, may now convict for offences, and make orders as to matters arising within the county, &c. in the same manner as if they were sitting in the county for which they act. So, where a magistrate is justice of the peace for two adjoining counties, &c., A. & B., he may act for A., whilst attending a petty sessions in and for B., provided it be not an act expressly required by some statute to be done at petty sessions; if it be by law to be done at a petty sessions, such as making an order in bastardy, or the like, then it must of course be done at a petty sessions holden for some division of the county where the matter arose.

It may be necessary to remark, however, that the section of the previous Act (*sect. 6, ante, p. 21*), by which justices of a county, riding, &c. may act as such within an adjoining city, or borough, &c. is general, and extends not only to indictable offences, but to all proceedings within the jurisdiction of a justice of the peace; and therefore justices may thus act for a county in an adjoining city or borough, &c. not only in cases within this or the former Act, but in making orders of removal, lunatic orders, orders in bastardy, and in all the other cases excepted from the operation of this Act by section 35, *post*. The 6th section of the former Act is here embodied into this Act, more from excessive caution, than from any real necessity for doing so.

VII. And be it enacted, that if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material

Summons to a witness to attend and give evidence.
1 J. P. 363.

- evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons (G. 1) to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify what he shall know concerning the matter of the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf), it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant (G. 2) under his or their hands and seals to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied by evidence upon oath or affirmation, that it is probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant (G. 3) in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so
- Post*, p. 119.
- If he do not obey the summons, then warrant.
- 1 J. P. 295.
- Post*, p. 119.
- In what cases warrant in the first instance.
- Post*, p. 120.

summoned before the said last mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or, having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant (G. 4) under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough, or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the mean time consent to be examined and to answer concerning the premises.

Refusing to
be examined,
imprison-
ment.

Post, p. 190.

NOTE.

Before the passing of this Act, there was no general law upon this subject: justices had no authority to summon a witness, upon a summary proceeding before them, unless enabled to do so by some special enactment for the purpose in a statute creating the particular offence of which they were inquiring; they had the power in the case of an indictable offence, but not in cases of summary convictions or orders. Of course therefore they had no power to issue a warrant to bring a witness before them, either in the first instance, or where he had disobeyed a summons; nor had they any power to punish a person, attending before them as a witness, for refusing to be sworn or affirmed, or for refusing to take an oath or affirmation, or, having taken such oath or affirmation, for refusing to answer the questions put to him. It may easily be conceived therefore of what importance to the administration of criminal justice the above section must be, which gives justices authority to compel the attendance of witnesses, and to compel them to give their evidence when they do attend. However, it is only in cases where the witness resides or is within the jurisdiction of the justice, and where the examination is to be within the jurisdiction, that a summons can be granted under this section; in all other cases, where the attendance of a witness is to be compelled before a justice of the peace out of sessions, with respect to a summary conviction or order, it can only be done by a subpoena issuing from the Crown office.

In order to obtain a summons for a witness, an oath or affirmation must be made that the party to be summoned resides or is within the county or district within which the justice has jurisdiction, that he is likely to give material evidence for the prosecutor or complainant, or for the defendant, and that the deponent verily believes that he will not appear voluntarily for the purpose of being examined as a witness. This is required, in order to prevent persons from being vexatiously summoned, who know nothing of the matter. As soon as this oath or affirmation is made, the justice will grant the summons (G. 1); and it must be served upon the witness, either personally, or by leaving the same for him at his last or most usual place of abode, and a reasonable sum must be paid or tendered to him, to defray his expenses in going to the hearing, and returning from it.

If at the time and place mentioned in the summons, (and which must be the same as that appointed for the hearing), the witness do not attend, and no just excuse be offered for his non-attendance, then, upon proof by oath that the summons was served, either personally upon the witness, or left for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his expenses, as above mentioned, the justice or justices then present will grant a warrant (G. 2) to apprehend him, and to bring him, at a time and place to be therein specified, before the same justices, or such other justices as may then be there, in order to give his evidence. This is executed in the usual way, and the witness brought up at the time and place specified. It is above mentioned that the summons can only be granted to compel the attendance of a witness who resides or is within the jurisdiction of the justices. But if he happen to be out of the jurisdiction at the time the warrant is granted, the warrant may be backed in the usual way (*see ante*, p. 32), so that he may be apprehended upon it at any place within or out of the jurisdiction.

Or, if before issuing the summons, proof shall be given to the justice, on oath or affirmation, from which he shall be satisfied that it is probable the witness will not attend to give evidence, unless compelled to do so, he may at once grant a warrant (G. 3) to bring him up, without issuing any previous summons. Although it appears clearly from this section, that a person against whom such warrant may issue in the first instance, must at the time reside or be within the justice's jurisdiction, in the same manner as in the case of a summons, yet if he happen to be out of the jurisdiction when the constable goes to execute the warrant, the warrant in that case may be backed in the usual way (*see ante*, p. 32); so that he may be apprehended upon it at any place within or out of the jurisdiction.

But supposing him before the magistrate, either voluntarily, or brought by warrant,—if he then refuse to be examined on

oath or affirmation,—or if he refuse to take such oath or affirmation,—or if, having taken such oath or affirmation, he refuse to answer any of the questions put to him,—and if in these cases he offer no just excuse for his refusal,—any justice of the peace then present may commit (G. 4) him for a time not exceeding seven days, unless in the mean time he consent to submit to be examined. If this arise from obstinacy, or a wish on the part of the witness to screen the person against whom he has been called, there seems to be no objection to summoning him again, and proceed against him by warrant, if necessary, as on the first occasion.

FORMS.

(G. 1.)

Summons of a Witness.

To E. F. of —, in the said [county] of —.

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c., as in the summons]; and it hath been made to appear to me, upon [oath] that you are likely to give material evidence on behalf of the [prosecutor, or complainant, or defendant] in this behalf: these are therefore to require you to be and appear on —, at — o'clock in the forenoon, at —, before such justices of the peace for the said county as may then be there, to testify what you shall know concerning the matter of the said information [or complaint].

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.
J. S. (L. S.)

(G. 2.)

Warrant, where a Witness has not obeyed a Summons.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c., as in the summons]; and it having been made to appear to me upon oath that E. F. of —, in the said county, labourer, was likely to give material evidence on behalf of the [prosecutor], I did duly issue my summons to the said E. F., requiring him to be and appear on —, at — o'clock in the forenoon of the same day, at —, before such justices of the peace for the said county as might then be there, to testify what he should know concerning the said A. B., or the

matter of the said information [or complaint]: and whereas proof hath this day been made before me upon oath of such summons having been duly served upon the said E. F., and of a reasonable sum having been paid [or tendered] to him for his costs and expenses in that behalf: and whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse hath been offered for such neglect: these are therefore to command you to take the said E. F., and to bring and have him on —, at — o'clock in the forenoon, at —, before such justices of the peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [or complaint].

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid. J. S. (L. S.)

(G. 3.)

Warrant for a Witness in the first instance.

To the constable of —, and to all other peace officers in the [county] of —.

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c., as in the summons]; and it being made to appear before me upon oath that E. F. of —, [labourer,] is likely to give material evidence on behalf of the [prosecutor] in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do, these are therefore to command you to bring and have the said E. F. before me on —, at — o'clock in the forenoon, at —, or before such other justices of the peace for the said county as may then be there, to testify what he shall know concerning the matter of the said information [or complaint].

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid. J. S. (L. S.)

(G. 4.)

Commitment of a Witness, for refusing to be Sworn or to give Evidence.

To W. T., constable of —, in the said [county] of —, and to the keeper of the [house of correction] at —.

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c., as

in the summons]; and one *E. F.* now appearing before me such justice as aforesaid on —, at —, and being required by me to make oath or affirmation as a witness in that behalf, hath now refused so to do [or being now here duly sworn as a witness in the matter of the said information or complaint, doth refuse to answer certain questions concerning the premises which are now here put to him], without offering any just excuse for such his refusal: these are therefore to command you the said constable to take the said *E. F.*, and him safely convey to the [house of correction] at — aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said *E. F.* into your custody in the said [house of correction], and there imprison him for such his contempt for the space of — days, unless he shall in the meantime consent to be examined and to answer concerning the premises; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.

J. S. (L. S.)

VIII. And be it enacted, that in all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise, it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular Act of parliament upon which such complaint shall be framed.

Complaints
for an order
need not be
in writing.

NOTE.

This is in fact merely declaratory of the law as it is at present; it is not necessary that a complaint should be in writing, unless the statute, on which it is framed, expressly require it to be so.

IX. And be it declared and enacted, that in all cases of informations for any offences or acts punishable upon summary conviction, any variance between such information and the evidence adduced in support thereof, as to the time at which such offence or act shall be alleged to have been committed, shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same;

Proceedings
upon infor-
mations.
1 J. P. 350—
359.

- and any variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or justices present and acting at the hearing, to be such, that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to
- Ante*, p. 109. some future day, and in the meantime to commit (D.) the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place, within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances; and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.
- Ante*, p. 110.
- Proviso.*
- Ante*, p. 111.

NOTE.

The first part of this section assumes that the information is in writing, for otherwise no objection could be taken for variance between it and the evidence adduced in support of it. But there is nothing in the statute that expressly requires that it should be in writing; and no objection therefore can be taken that it is not in writing, unless in cases where it is specially required to be so by the statute creating the particular offence under consideration, or regulating the prosecution for it. In cases where it is so required, it must be in writing; in cases where the magistrate intends to issue a warrant in the first instance, it ought to be in writing, because the statute requires that the matter of the information should first be substantiated by oath or affirmation; in cases of much importance, or where any complexity or difficulty is likely to arise, the magistrates will do well to require the information to be in writing; but in all other cases, a mere verbal information will be sufficient.

As to variances between the information and evidence:—1st. No objection shall be made for a variance as to the time laid at which the offence is alleged to have been committed.—2nd. No objection shall be made for variance as to the parish or township in which the offence is alleged to have been committed.—3d. No objection shall be made for variance in any other respect, unless the variance appear to the justices to be such as to have deceived or misled the defendant; in which case, the only effect of the variance will be, that the justices, if the defendant wish it, may adjourn the hearing to some future day, to give him time to prepare his defence to the charge, as it appears in evidence. In the mean time, the appearance of the defendant at the time to which the hearing is thus adjourned, must be provided for; and for this purpose, the justices may commit the defendant, or discharge him on his recognizance (E.) with or without sureties, at their discretion; and if afterwards he do not appear at the time appointed, his recognizance, with an indorsement of his non-appearance upon it, will be sent to the clerk of the peace and estreated, and the justices or one of them may issue a warrant for his apprehension.

We have already seen, that no objection can be made to the information, for any alleged defect in substance or in form. *Sect. 1, ante, p. 96.*

It is objected (S.), that it is a "little singular" that notwithstanding a defendant is permitted to object to the information or complaint, there is no provision enabling him to obtain a copy of these documents. Now to me, it would seem very singular if the Act contained any such provision, inasmuch as neither information or complaint are required to be in writing.

FORMS.

Form of an Information for an Offence punishable on Conviction.

Be it remembered that on the — day of —, in to wit. { the year of our Lord one thousand eight hundred and fifty —, at — in the said [county], J. N. of —, labourer, personally cometh before me, the undersigned, one of her Majesty's justices of the peace in and for the said [county], and informeth me that A. B., late of the parish of — in the said county, labourer, within the space of [six calendar months,] or whatever time is limited by statute) "last past, to wit, on — at — [here state the facts and circumstances of the offence as defined by the statute creating it*]; contrary to the form of the statute in such case made and provided: wherefore the said J. N. prayeth the consideration of me the said justice in the premises, and that the said A. B. may be summoned to appear before me, and answer the premises, and make his defence thereto.*

The like, Qui tam.

Be it remembered that on the — day of —, to wit. { in the year of our Lord one thousand eight hundred and fifty —, at —, in the said [county], J. N. of —, labourer, who as well for our sovereign lady the Queen [or for the poor of the parish of —, in the said county, or as the statute may be,] as for himself doth prosecute in this behalf, personally cometh before me, the undersigned, one of Her Majesty's justices of the peace in and for the said [county], and as well for our said lady the Queen [or the poor of the said parish] as for himself, informeth me that A. B. late of the parish of — in the said [county], labourer, within the space of [six calendar months,] or whatever time is limited by statute), "last past, to wit, on —, at — [here state the facts and circumstances of the offence, as defined by the statute creating it*], contrary to the form of the statute in such case made and provided; whereby and by force of the statute in such case made and provided, the said A. B. hath forfeited for his said offence the sum of —. Wherefore the said J. N., who sueth as aforesaid, prayeth the consideration of me the said justice in the premises, and that the said A. B. may be convicted of the offence aforesaid, and that one moiety of the said forfeiture may be adjudged to [our said lady the Queen], and*

* As to the form of stating the offence here, see the first two volumes of Archbold's Justice of the Peace, under the proper heads.

the other moiety thereof to the said J. N., according to the form of the statute in such case made and provided; and that the said A. B. may be summoned to appear before me and answer the premises, and make his defence thereto.

(D.)

Warrant of Committal for safe custody, during an adjournment of the hearing.

See this form, *ante*, p. 109.

(E.)

Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with.

See this form, *ante*, p. 110.

(F.)

Certificate of Non-appearance to be indorsed on the Defendant's Recognizance.

See this form, *ante*, p. 111.

X. And be it declared and enacted, that every such complaint upon which a justice or justices of the peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular Act of parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof, except in 1 J. P. 356. Complaint or information, how made or laid. cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance, the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such

complaint or information may be laid or made by the
 1 J. P. 339. complainant or informant in person, or by his counsel
 or attorney, or other person authorized in that behalf.

NOTE.

The information may be laid or complaint made, either in person, or by counsel or attorney, or any other person authorized for that purpose by the informant or complainant; and this even in the case of informations by common informers, no distinction in this respect being now made between such informations and informations by parties grieved. It may be laid or made without oath, in all cases where the statute on which it is framed makes no express provision to the contrary; except in the case of an information where a warrant is to be issued on it in the first instance, and there the matter of the information must be substantiated by the oath or affirmation either of the informant, or of some witness in that behalf.

This section enacts that each information shall be for one offence only, and each complaint for one matter of complaint only. Heretofore by law there might be two or more counts in an information; but whenever an informant availed himself of this in practice, it was found to involve the conviction in great confusion. It has been deemed expedient therefore by this statute to put an end to such a practice; where there are two distinct offences or matters of complaint, let there be as many informations or complaints; and it is unnecessary to state the offence in different ways in different counts, for no objection can now be made to the information or complaint for any defect in it, in substance or in form, and the utmost effect of a variance between it and the evidence will be an adjournment of the hearing, to give the defendant an opportunity to frame his defence to the case as made out by the evidence. See *sects. 1 and 9, ante*, pp. 96, 121. But where two or more are jointly charged with an offence, that is but one offence within the meaning of this section. So, where one is charged as principal, and another as aiding, abetting, counselling, or procuring him to commit the offence, they may be jointly charged in the same information; for procurers, &c. in all offences less than felony are deemed in law principals, and the offence of the person who actually committed the act, and that of the person who counselled or procured him to do it, or aided him in doing it, may fairly be deemed but one offence.

It is objected (S.), that as this section does not lay down a general rule, in what cases the information or complaint is to

be on oath, in what not, but merely enacts that in all cases where it is not required by some particular Act to be upon oath, it need not be so,—justices “will have to turn to the particular statute to ascertain whether or not the Act does otherwise require it.” To this it may be answered that no such general rule could be laid down, some cases requiring it, some not, according to circumstances, of which the legislature in each particular case were certainly the best judges. And in addition to this, it may be observed, that it was not intended by this Act, to relieve justices from the trouble of consulting the Acts creating the offences upon which they would have to adjudicate; they must necessarily do so, to ascertain the definition of the offence, the punishment, &c.

It is also gravely objected (S.), that this section, in providing that where a warrant is issued in the first instance, “the matter of the information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf,” has used the words “*by* some witness,” instead of “*of* some witness,” &c.; but this gentleman seems to forget that a justice of the peace cannot examine a witness, except upon oath.

It is also remarked (S.), that although this Act gives no directions as to an information being in writing, and in the absence of such an express provision, the information need not have been in writing, according to the law as it was previously to this Act, yet “inasmuch as a form has been supplied and provisions are inserted relative to the form of the complaint, it may fairly be assumed that the legislature intended that the information or complaint should in all cases be reduced to writing, although it has not been so enacted, and *therefore* it will be advisable that it should be so taken.” What must be the surprise of the reader, when he is told,—when he sees, upon a perusal of the statute, that it gives no form of a complaint at all, and so far from implying that the complaint must in all cases be in writing, it expressly enacts (sect. 8) that such complaint need not be in writing, unless required to be so by the particular statute on which it is framed.

XI. And be it enacted, that in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

Time limited for such complaint or information.

NOTE.

In most cases, the statute creating the offence, or giving the remedy by complaint, limits a time within which the information must be laid or the complaint made. If it do not, the information must now be laid or the complaint made within six calendar months after the offence committed or the cause of complaint accrued. Formerly the general time limited was, one year in informations by parties grieved, one year in an information *qui tam*, or two years if the information were brought by the Queen after the informer's year had expired. 31 El. c. 5, s. 5. There was no general law of limitation as to complaints, previously to this statute.

Hearing, by whom and where.

1 J. P. 362.

Place of hearing, a public court.

1 J. P. 362.

Parties allowed counsel or attorney.

1 J. P. 362.

XII. And be it enacted, that every such complaint and information shall be heard, tried, determined, and adjudged by one or two or more justice or justices of the peace, as shall be directed by the Act of parliament upon which such complaint or information shall be framed, or such other Act or Acts of parliament as there may be in that behalf; and if there be no such direction in any such Act of parliament, then such complaint or information may be heard, tried, determined, and adjudged by any one justice of the peace for the county, riding, division, liberty, city, borough, or place where the matter of such information shall have arisen; and the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them; and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

NOTE.

By this section, every information or complaint may be heard and determined before one justice of the peace, unless

the statute on which the information or complaint is framed, or some other statute on the subject, direct the hearing to be before two or more. The statute in each particular case usually states before what justice or justices, and what number of justices, the hearing is to be ; it is only where the statute is silent upon that subject, that this section applies. And in cases of informations or complaints on statutes already passed, or on those to be passed hereafter containing no provision to the contrary, it is not necessary that the hearing should be before the justice who received the information or complaint or who issued the summons, &c. This is expressly enacted by section 29, *post*.

The room or place in which the case is heard, is to be deemed a public court. A marked distinction is thus made by this and the preceding statute, between a court in which the magistrate merely acts ministerially, and one in which he acts judicially ; in the latter, the court is public, in the former not.

Each party is allowed to conduct his cause, and to examine and cross-examine witnesses, by counsel or attorney. This had been enacted as to defendants, by stat. 6 & 7 Will. 4, c. 114, s. 2 ; and was always considered the law as to informants and complainants, with the exception of common informers. It is now the law in all cases, and with respect to either party, by this section.

XIII. And be it enacted, that if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information, the defendant against whom the same shall have been made or laid shall not appear when called, the constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons ; and if it appear to the satisfaction of any justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended ; and when such defendant shall afterwards be apprehended under such warrant, he shall be brought before

Appearance
or default
of the de-
fendant.

Default, after
service of the
summons.
1 J. P. 362.

1 J. P. 361.
Ante, s. 2,
p. 101.

the same justice or justices, or some other justice or justices of the same county, riding, division, liberty, city, borough, or place, who shall thereupon, either by his or their warrant (H.) commit such defendant to the house of correction or other prison, lock-up house, or place of security, or, if he or they think fit, verbally to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice; or if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid, do not appear, by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information; unless for some reason he or they shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit, in which case such justice or justices may commit (D.) the defendant in the meantime to the house of correction or other prison, lock-up house, or place of security, or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices conditioned for his appearance at the time and place to which such hearing shall be so adjourned; and if such defendant shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding,

Post, p. 132.

Appearance.

Ante, p. 109.

Ante, p. 110.

Ante, p. 111.

division, liberty, city, borough, or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant; but if both parties appear, either personally or by their respective counsel or attornies, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

NOTE.

If at the time appointed by the summons, both parties appear before the justices, either personally, or by their counsel or attornies, the justices present will then proceed to hear and determine the case. What is here stated, however, as to appearance by counsel or attorney, must not, as respects the defendant, be deemed to dispense with his personal appearance, if the justices require it; it appears clearly from the first part of the above section, and from the second section of the statute, *ante*, p. 101, that if the defendant do not personally appear, the justices may issue their warrant against him, to enforce his attendance, and may adjourn the case in the mean time.

If at the time appointed by the summons, the defendant personally appear, but the informant or complainant do not appear, either personally, or by his counsel or attorney, the justices may dismiss the information or complaint; or, instead of doing so, they may, for sufficient reason, adjourn the hearing to another day, on such terms as they may think fit. In case of adjournment however it may be necessary to provide for the appearance of the defendant at the time to which the case is so adjourned: and for that purpose, the justices may either commit him, or may discharge him on his recognizance (E) with or without sureties, at their discretion; and if afterwards he do not appear at the time appointed, his recognizance, with an indorsement of his non-appearance upon it (F.), will be sent to the clerk of the peace and estreated, and the justices or one of them may issue a warrant for his apprehension.

If at the time appointed by the summons, the informant or complainant appear by himself, his counsel or attorney, but the defendant do not appear, then the justices may either proceed to the hearing of the case *ex parte*, upon its being proved that the summons was duly served a reasonable time before; or they may issue a warrant to have the defendant appre-

hended, and adjourn the hearing of the case in the mean time: and when he shall afterwards be apprehended, and taken before a magistrate, then, inasmuch as the informant or complainant will not at such time be there with his witnesses, such magistrate must commit the defendant to safe custody, and order him to be brought up at a certain time, and shall cause notice thereof, with the time so appointed, to be given to the informant or complainant. And if at the time so appointed the informant or complainant do not appear, by himself, his counsel or attorney, the justices may dismiss the information or complaint, and discharge the defendant; or if they see reason for it, they may again adjourn the hearing to another day, upon such terms as they shall think fit, and either commit the defendant to safe custody, or may discharge him on his recognizance (E.) with or without sureties at their discretion; and if afterwards he do not appear at the time appointed, his recognizance, with an indorsement of his non-appearance upon it (F.), will be sent to the clerk of the peace and estreated, and the justices or one of them may again issue a warrant for his apprehension.

Although this practice differs in some of its details from the former practice, yet in some respects it is substantially the same. Before this statute, if the defendant did not appear, then upon proof of a personal service of the summons, the justices might proceed and hear the case; if the prosecutor or complainant did not appear, the justices might dismiss the information or complaint, although undoubtedly then, as now, they might have adjourned the case, and committed the defendant; if both parties appeared, the justices heard the case, and decided.

FORMS.

(H.)

Warrant to remand a Defendant, when apprehended.

To W. T. constable of — and to the keeper of the [house of correction] at —.

Whereas information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c., as in the summons or warrant]: and whereas the said A. B. hath been apprehended under and by virtue of a warrant upon such information [or complaint], and is now brought before me as such justice as aforesaid: these are therefore to command you the said constable, in her Majesty's name, forthwith to convey the said A. B. to the [house of correction] at — and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper to receive the said A. B. into your custody in

the said [house of correction], and there safely keep him until — next the — day of — instant, when you are hereby commanded to convey and have him at — at — o'clock in the forenoon of the same day, before such justices of the peace of the said [county] as may then be there, to answer to the said information [or complaint], and to be further dealt with according to law.

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.

J. S. (L. S.)

(D.)

Warrant of Committal for safe custody, during an adjournment of the hearing.

See this form, *ante*, p. 109.

(E.)

Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with.

See this form, *ante*, p. 110.

Notice of such Recognizance to be given to the Defendant and his Surety.

See this form, *ante*, p. 110.

(F.)

Certificate of Non-appearance to be indorsed on the Defendant's Recognizance.

See this form, *ante*, p. 111.

XIV. And be it enacted, that where such defendant shall be present at such hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be, and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prose-

Hearing,
how.
1 J. P. 362,
363.

1 J. P. 364. **cutor or complainant, and such witnesses as he may examine, and such other evidence as he may adduce, in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and determine the same, and shall convict or make an order upon the defendant, or dismiss the information or complaint, as the case may be; and if he or they convict or make an order against the defendant, a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction (I. 1—3) or order (K. 1—3) shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same (L.), and shall give the defendant in that behalf a certificate thereof (M.), which said certificate afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively against the same party: provided always, that if the information or complaint in any such case shall negative any exemp-**

Post, pp. 139—141.
Post, pp. 141—143.
Post, p. 143.
Post, p. 144.
 Proviso.
 1 J. P. 363.

tion, exception, proviso, or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

NOTE.

There is some difference between the practice here established, and the practice formerly, inasmuch as now, in summary proceedings before justices, there can be no reply upon evidence, nor general reply, the observations being confined to the opening statement of the prosecutor or complainant, and the statement of the defendant in his defence.

When the case is called on, the first proceeding is analogous to the arraignment in the case of an indictment: the defendant is asked if he have any cause to show why he should not be convicted, or (in the case of a complaint) why an order should not be made against him; and he thereupon either admits the truth of the information or complaint, or he does not.

If the defendant admit the truth of the information or complaint, the justices may at once convict him, or make an order against him; or where they have a discretion to exercise as to the amount of the punishment they shall award, or the amount or nature of the order they shall make, they may hear so much of the evidence, produced by either party, as may be necessary to guide that discretion.

But if the defendant do not admit the truth of the information or complaint, then the case is heard in detail. The prosecutor or complainant by himself, his counsel or attorney, is first heard, to state the case; his witnesses are then examined, cross-examined by the defendant, and re-examined, and any written evidence he puts in received. And here it may be observed, that if the information negative any "exemption, exception, proviso or condition" in the statute on which it is framed, it is not for the prosecutor or complainant to prove such negative, but it is for the defendant to prove the affirmative of it, if he can. When the prosecutor's or claimant's case is closed, the defendant then, by himself, his counsel or attorney, either contents himself by making observations on the case of the other party, and contending that he has made out no case in point of law,—or he opens a defence, and calls witnesses to prove it, who are examined, cross-examined by the other party, and re-examined. And here the addresses of both parties end; there is no reply. The prosecutor or complainant, however, may, if he think fit, call witnesses in reply to contradict or explain what the defendant's witnesses have

stated ; but the defendant is not allowed to reply upon the evidence, nor is the prosecutor or complainant entitled to a general reply.

The justices thereupon consider the case and evidence, and convict (I. 1—3) or make an order (K. 1—3) if they decide for the informant or complainant, or they dismiss the information or complaint, if they decide in favour of the defendant. If they convict or make an order, they shall cause it to be lodged with the clerk of the peace, to be by him filed amongst the records of the quarter sessions. No time is here mentioned, within which such conviction or order is to be lodged ; but in any particular case where a time is limited by statute,—in every such case that time must be still observed. If on the other hand the justices dismiss the information or complaint, they make an order of dismissal (L.), and give the defendant a certificate of it (M.), if required.

This is a statement of the practice, where both parties appear ; the practice where either party does not appear has been already stated *ante*, p. 131.

A wish has been expressed by many professional persons and magistrates, that I should state in a note the applicability of this Act to proceedings in certain cases ; and as this perhaps is a good opportunity of doing so, I shall accordingly now state what I conceive to be the law upon the subject.

There is a class of cases, where statutes give a power to magistrates to issue a warrant of distress or warrant of commitment, without making any express mention of any previous conviction or order to warrant the issuing of it. The stat. 4 Geo. 4, c. 34, s. 3, as to workmen not fulfilling their contracts, is an instance of this. That section enacts, that if any servant in husbandry, artificer, &c. shall contract to serve, and shall not enter the service accordingly, or shall absent himself from the service, or shall be guilty of any other misconduct, a magistrate on proof thereof may commit him to the house of correction, or may abate his wages and order him to be discharged. The practice upon this Act of parliament has been, not to draw up any separate form of conviction, but to embody the conviction and commitment in one instrument. Indeed, in the recent case of *Lindsay v. Leigh*, 17 Law J. 50, *n*, it was holden by the court of exchequer chamber, that a separate conviction could not be drawn up ; for the statute makes mention only of a commitment, and gives no authority to the justice to draw up a separate conviction ; and Parke, B. added, that the commitment in such a case was in substance an order, not a conviction. On the other hand, the court of Queen's Bench, in a previous case, *Re Hammond*, 2 New Sess. Ca. 397, intimated that there might be either a separate conviction, and then a warrant of commitment reciting it, or one instrument embodying both a conviction and commitment, but they ruled that if the conviction and commitment were embodied in one

instrument, that instrument must have all the legal requisites of a conviction, and, among others, must set out the evidence, which was at that time required in the general form of conviction given by stat. 3 Geo. 4, c. 23, since repealed. Assuming then that in such cases, previously to the present Act, there must have been a conviction or order, as the case might be, to warrant the commitment, but that both were to be embodied in the same instrument, the question arises, are such cases within the meaning of the present Act. As the bill was originally drawn, there could be no doubt of it; for it provided that in all cases where a statute gave or should give authority to a justice to issue a warrant of distress or commitment, a conviction or order, as the case might be, should first be drawn up to warrant it: for it was considered absurd, or at least irregular, to allow a warrant of distress or commitment to issue, without some adjudication to warrant it, the same as suing out a writ of execution in civil cases, without a previous judgment. The section also provided, that such order or conviction should not form any part of the warrant of commitment or of distress, evidently having reference to this class of cases, and providing that in future the conviction or order should be a separate instrument, and should no longer be embodied in the warrant as formerly. But it was suggested that in the large manufacturing towns and sea-ports, where there are many convictions and orders in the course of a day, it would be impracticable to draw up the convictions or orders, with that care which is requisite, before issuing the warrant of distress or commitment; and therefore the section was thus far altered, that instead of drawing up the conviction or order in the first instance, a mere minute or memorandum of it is made, after which the warrant may issue, but the conviction or order shall afterwards be drawn up in form, and filed with the clerk of the peace. *See sect. 14.* We have it therefore decided that there must be a conviction or order in this class of cases, and therefore this class of cases is within the 1st section of this statute as to the summons, within the 2nd section as to the warrant for apprehension, within the 12th, 13th, and 14th sections as to the hearing, within the 17th and subsequent sections as to the warrant of distress or commitment, and in fact within all the intermediate sections also. And the conviction or order can no longer be part of the warrant of distress or commitment: the order cannot, by the express words of the 17th section; and the conviction cannot, by necessary intendment from the 14th section, which requires the conviction to be filed with the clerk of the peace, and from the 21st and other sections relating to the warrants of distress or commitment, which uniformly treat these warrants as distinct from the convictions or orders on which they are founded.

There is a second class of cases, where justices are enabled to issue warrants of distress for nonpayment of a rate, and to issue warrants of commitment in default of distress. In some of these, such for instance as stat. 58 Geo. 3, c. 127, relating to church-rates, the statute expressly requires an order to be drawn up, and they are of course within this Act. In others, for instance the cases of poor-rates and highway-rates, the matter is not quite so clear. They differ from the first class of cases above-mentioned in this, that the warrants may be deemed to be founded on a *quasi* record, namely, the rate or assessment, which the justice cannot vary or alter, and the summons, &c. may be likened to the proceedings in *scire facias* in civil cases, to have execution upon some matter of record. Before the passing of this Act, justices were in the habit of awarding costs in such cases, under stat. 18 Geo. 3, c. 19, s. 1, but I fear without authority; for it seems to me that the application of overseers of the poor for a distress warrant, to enforce payment of a rate, is not a "complaint" within the meaning of that statute, for that evidently means a complaint of some matter on which the justice must adjudicate, whereas the justice has no authority to adjudicate upon the rateability of the party, or his liability to pay the rate. But since the last edition of this work, the matter has been put beyond dispute, by the Legislature passing the stat. 12 & 13 Vict. c. 14, to enable overseers of the poor and surveyors of highways to recover the costs of distraining for rates; which statute, with notes, the reader will find in a subsequent part of this volume.

There is a third class of cases, where justices are enabled to make an order, but that order is not to be enforced by warrant of distress or commitment; such as the order under the Master and Servants' Act, 4 Geo. 4, c. 34, s. 3, already mentioned (*ante*, p. 136), to discharge the servant, or to abate his wages; such as the order discharging an apprentice, under stat. 20 Geo. 2, c. 19, s. 3, and the like: these cases are evidently within the Act, so far as the Act is applicable to them, that is to say, up to the making of the order, inclusive.

There is a fourth class of cases, which are clearly not within this Act, namely, cases where a special and extraordinary duty is cast upon justices; such, for instance, as the proceedings upon view in the case of forcible entry; the proceedings upon view, where a tenant deserts demised premises, leaving no distress to countervail the arrears of rent; the recovery of premises by the landlord, upon the determination of the tenancy; the view and proceedings, where a highway is to be stopped up or diverted; the binding over of persons to keep the peace or be of good behaviour;—in these and the like cases, justices must be guided by the statutes which give

them jurisdiction in the particular proceeding, without reference to this Act. See also sect. 35, *post*.

It is objected (S.) and made matter of loud complaint, that at the hearing, the prosecutor or complainant is not allowed the privilege of a reply, in the same manner as at *nisi prius*, and is prevented from calling witnesses to rebut the defendant's witnesses to character. As to the latter, it is merely necessary to observe, that allowing a prosecutor to call witnesses to contradict the defendant's witnesses to character, has always been deemed a harsh and unfair proceeding, and it was deemed quite unnecessary to introduce it for the first time into proceedings to summary conviction. And as to the right of reply upon evidence, and the right of general reply, if it were allowed to be exercised, a single case might often last a day; and in large towns, such as Manchester, Liverpool, Hull, &c. and in the police offices of the metropolis, it would be impossible to get through the business. All that is really required is, a statement of the case and defence; all other speeches by or for either party, may very well be dispensed with, without any hazard of injustice being done by reason of the omission.

FORMS.

(I. 1.)

Conviction for a Penalty to be levied by Distress, and in default of sufficient Distress Imprisonment.

*{ Be it remembered, that on the — day of — in to wit. { the year of our Lord — at — in the said [county], A. B. is convicted before the undersigned, [one] of her Majesty's justices of the peace for the said county, for that [he the said A. B., &c. stating the offence, and the time and place when and where committed]; and I adjudge the said A. B. for his said offence to forfeit and pay the sum of — [stating the penalty, and also the compensation, if any], to be paid and applied according to law, and also to pay to the said C. D. the sum of — for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next] * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress * I adjudge the said A. B. to be imprisoned in the [house of correction] at — in the said county [there to be kept to hard labour] for the space of —, unless the said several sums, and all costs and charges of the said distress, [and of the commitment and conveying of the said A. B. to the said house of correction] shall be sooner paid.*

Given under my hand and seal, the day and year first above mentioned, at — in the [county] aforesaid.

J. S. (L. S.)

* Or, where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks*, say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c., as above, to the end.

(I. 2.)

Conviction for a Penalty, and in default of Payment Imprisonment.

Be it remembered, that on the — day of — in to wit. } the year of our Lord — at — in the said [county] A. B. is convicted before the undersigned, [one] of her Majesty's justices of the peace for the said county, for that [he the said A. B. &c., stating the offence, and the time and place when and where it was committed]; and I adjudge the said A. B. for his said offence to forfeit and pay the sum of — [stating the penalty, and the compensation if any], to be paid and applied according to law, and also to pay to the said C. D. the sum of — for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next], I adjudge the said A. B. to be imprisoned in the [house of correction] at — in the said [county], [and there to be kept to hard labour] for the space of — unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction], shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at — in the [county] aforesaid.

J. S. (L. S.)

(I. 3.)

Conviction when the Punishment is by Imprisonment, &c.

Be it remembered, that on the — day of — in to wit. } the year of our Lord —, in the said [county], A. B. is convicted before the undersigned, [one] of her Majesty's justices of the peace for the said county, for that [he the said A. B., &c., stating the offence, and the time and place when and where committed]; and I adjudge the said A. B. for his said offence to be imprisoned in the [house of correction] at — in the said [county] [and there kept to hard labour] for the space of —, and I also adjudge the said A. B. to pay

*the said C. D. the sum of — for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before — next] then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf* I adjudge the said A. B. to be imprisoned in the said house of correction [and there kept to hard labour] for the space of — to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.*

Given under my hand and seal, the day and year first above mentioned, at — in the county aforesaid.

J. S. (L. S.)

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks*, say, "inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family] or "that the said A. B. hath no goods or chattels whercon to levy the said sum for costs by distress], I adjudge," &c.

(K. 1.)

Order for Payment of Money to be levied by Distress, and in default of Distress, Imprisonment.

*{ Be it remembered, that on — complaint was to wit. { made before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit on —, at —, the parties aforesaid appear before me the said justice, [or the said C. D. appears before me the said justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf which required him to be and appear here at this day before such justices of the peace for this said county as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do adjudge the said A. B. [to pay to the said C. D. the sum of — forthwith, or, on or before — next, or as the statute may require], and also to pay to the said C. D. the sum of — for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next] * I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf* I adjudge the said A. B. to be imprisoned in the [house of correction] at — in the said [county] [and there*

kept to hard labour] for the space of —, unless the said several sums, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction], shall be sooner paid.

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.

J. S. (L. S.)

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks*, say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c.

(K. 2.)

Order for Payment of Money, and, in default of Payment, Imprisonment.

Be it remembered, that on — complaint was to wit. } made before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit on —, at —, the parties aforesaid appear before me the said justice [or the said C. D. appears before me the said justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf which required him to be and appear here on this day before such justices of the peace for the said county as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do adjudge the said A. B. [to pay to the said C. D. the sum of — forthwith, or on or before — next, or as the statute may require], and also to pay to the said C. D. the sum of — for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next], I adjudge the said A. B. to be imprisoned in the [house of correction] at — in the said county [there to be kept to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction] shall be sooner paid.

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.

J. S. (L. S.)

(K. 3.)

Order for any other matter where the disobeying of it is punishable with Imprisonment.

Be it remembered, that on — complaint was to wit. } made before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of — for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and now at this day, to wit, on —, at —, the parties aforesaid appear before me the said justice, [or the said C. D. appears before me the said justice, but the said A. B. although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here at this day, before such justices of the peace for the said county as should now be here, to answer to the said complaint, and to be further dealt with according to law], and now having heard the matter of the said complaint, I do therefore adjudge the said A. B. to [here state the matter required to be done], and if upon a copy of a minute of this order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B. for such his disobedience to be imprisoned in the [house of correction] at — in the said county [there to be kept to hard labour] for the space of — [unless the said order be sooner obeyed, if the statute authorize this]; and I do also adjudge the said A. B. to pay to the said C. D. the sum of — for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before — next], I order the same to be levied by distress and sale of the goods and chattels of the said A. B. [and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said house of correction [and there kept to hard labour] for the space of — to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid].

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.
J. S. (L. s.)

(L.)

Order of Dismissal of an Information or Complaint.

Be it remembered, that on — information was to wit. } laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for

*the said [county] of —, for that [&c. as in the summons to the defendant], and now at this day, to wit, on —, at —, both the said parties appear before me in order that I should hear and determine the said information [or complaint], [or the said A. B. appeareth before me, but the said C. D., although duly called, doth not appear]; whereupon the matter of the said information [or complaint] being by me duly considered, [it manifestly appears to me that the said information [or complaint] is not proved, and *] I do therefore dismiss the same, [and do adjudge that the said C. D. do pay to the said A. B. the sum of — for his costs incurred by him in his defence in this behalf; and if the said sum for costs be not paid forthwith [or on or before —], I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf I adjudge the said C. D. to be imprisoned in the [house of correction] at — in the said county [and there kept to hard labour] for the space of —, unless the said sum for costs, and all costs and charges of the said distress [and of the commitment and conveying of the said C. D. to the said house of correction], shall be sooner paid.*

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.
J. S. (L. S.)

* If the informant or complainant do not appear, these words may be omitted.

(M.)

Certificate of Dismissal.

I hereby certify, that an information [or complaint] preferred by C. D. against A. B., for that [&c., as in the summons], was this day considered by me, one of her Majesty's justices of the peace in and for the [county] of —, and was by me dismissed [with costs].

Dated this — day of — 185—.

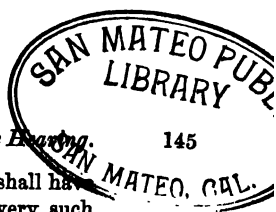
J. S.

Witnesses,
their com-
petency, and
how sworn.

1 J. P. 451.

1 J. P. 364.

XV. And be it enacted, that every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, and the justice or justices before whom any such witness shall



c. 43, ss. 15, 16.] *Witnesses. Adjournment of the Hearing.*

appear for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath or affirmation.

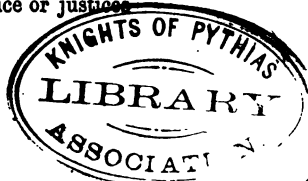
NOTE.

There is a marked distinction here between the prosecutor of an information, and a complainant seeking to obtain an order for the payment of money. The latter is made competent as a witness, from necessity; for the matter of these complaints usually arises out of some contract or transaction between the party complaining and the party complained against; and if the former were to be deemed incompetent on the ground of interest, it would amount in many cases to a denial of justice altogether. But the same reason does not extend to an information for an offence; there the informer, if he be entitled as of right to a portion of the penalty, is incompetent as a witness, unless made competent by the express provision of the statute on which the information is founded or regulated. The above section enacts that the prosecutor of an information, not having a pecuniary interest in the result of the same, shall be a competent witness; but it leaves the case of an informer, having a pecuniary interest in the result of his information, just as it was before, that is to say, competent, if rendered so by the express provision of the statute on which the information is founded, but otherwise not.

It is remarked (S.), that the word "prosecutor" here means common informer. This is a mistake; it means any person upon whose information there is a proceeding towards a summary conviction, whether he be a common informer or not.

XVI. And be it enacted, that before or during such Adjournment of the hearing, in what cases, and how. 1 J. P. 364.
hearing of any such information or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attornies or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may commit (D.) him Ante, p. 100.
to the common gaol or house of correction or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices

h



- shall think fit, or may discharge such defendant upon
- Ante*, p. 110. his entering into a recognizance (E.), with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned; and if at the time or place to which such hearing or further hearing shall be so adjourned, either or both of the parties shall not appear personally, or by his or their counsel or attornies respectively, before the said justice or justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said justice or justices may dismiss such information or complaint, with or without costs, as to
- Proviso.* such justices shall seem fit: provided always, that in all cases where a defendant shall be discharged on recognizance as aforesaid, and shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice or justices who shall have taken the said recognizance, or any other justice or justices
- Ante*, p. 111. who may then be there present, upon certifying (F.) on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

NOTE.

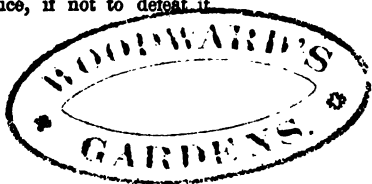
The power here given to adjourn the hearing, being discretionary, may be exercised with or without the assent of the parties, without any fear of subjecting the justices to an action. See 11 & 12 Vict. c. 44, s. 4, *post*, and see *Davis v. Capper*, 10 B. & C. 28. And it is given to one justice, for this reason, that when the parties attend at the time and place mentioned in the summons, only one justice may happen to be present, and the Act of parliament, on which the information or com-

plaint is founded may possibly require that the hearing shall be by two justices; and in such a case it is necessary that the one justice should have authority to adjourn the case. If there be two justices present, the adjournment must be by both; if more than two, then by the majority. The time and place to which the hearing is adjourned, must be stated in the presence and hearing of the party or parties then present, or of their attorneys or agents.

In the mean time, the necessary precaution must be taken to ensure the attendance of the defendant at the time and place to which the case is adjourned. In some cases, the justices might think themselves warranted in allowing the defendant to go at large, without recognizance or sureties, on his undertaking to appear at the time and place to which the hearing is adjourned. In other cases, they may think it necessary to require a recognizance (E.), with or without sureties; in which case if the defendant fail to attend at the time and place mentioned in the condition of the recognizance, any justice then present may indorse a certificate (F.) of the non-attendance on the recognizance, and transmit it to the clerk of the peace, to be estreated. And in other cases, the justice or justices may not think it prudent to let the defendant go at large, even on recognizance with sureties, or the defendant may not be able to find sureties, in which case the justice or justices may commit (D.) him.

This section provides, that if either or both the parties fail to appear in person, or by their counsel or attorneys, at the time and place to which the case was adjourned, the justice or justices then present may nevertheless proceed to the hearing or further hearing, as if the parties were present. This will have the effect of preventing any compromise between the parties, without the consent of the justices. The section also provides that if the prosecutor or complainant do not appear, the justices may dismiss the information or complaint, with or without costs.

It is objected (S.), that throughout this Act there is no "compulsory power to admit to bail,"—(meaning I suppose a compulsory obligation),—but in every instance the admitting to bail is discretionary with the justices. But it must be recollected that before this statute there was no such thing as bail in summary proceedings; this statute first gave justices a power to bail in such cases; but to make it an obligation, to make that obligation compulsory, and not to allow to the justices the exercise of any discretion in determining in what cases it would be safe to take bail, and in what cases they might with safety allow the party to go at large on his own recognizance, was deemed too hazardous an experiment, and likely in many cases to delay justice, if not to defeat it altogether.



FORMS.

(D.)

Warrant of Commitment for safe Custody, during an adjournment of the Hearing.

See this form, *ante*, p. 109.

(E.)

Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with.

See this form, *ante*, p. 110.

(F.)

Certificate of Non-appearance to be indorsed on the Defendant's Recognizance.

See this form, *ante*, p. 111.

Form of convictions and orders.

Ante, pp. 139, 140.
1 J. P. 372, - 308.

Ante, pp. 141 - 143.

XVII. And be it enacted, that in all cases of conviction where no particular form of such conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction have been therein given or not, it shall be lawful for the justice or justices who shall so convict to draw up his or their conviction on parchment or on paper in such one of the forms of conviction (I. 1—3) in the schedule to this Act contained as shall be applicable to such case, or to the like effect; and where an order shall be made and no particular form of order is or shall be given by the statute giving authority to make such order, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by whom such order is to be made to draw up the same in such one of the forms of orders (K. 1—3) in the schedule to this Act contained as may be applicable to such case, or to the like effect; and in all cases where by any Act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any

c. 43, s. 17.] *Forms of Convictions and Orders.*

order of a justice or justices, the defendant shall served with a copy of the minute of such order before any warrant of commitment or of distress shall issue in that behalf, and such order or minute shall not form any part of such warrant of commitment or of distress.

NOTE.

Summary convictions by justices of the peace, being records, and, when filed at the court of quarter sessions, being records of that court, were formerly drawn up on parchment with great particularity, setting forth all the proceedings. It set out the information; then stated that the defendant was summoned, particularly when he did not actually appear at the hearing; it then stated that the defendant appeared and pleaded or confessed the information, or, if he did not appear, it stated the default, as the case might be; if there were no confession, it then set out the evidence given on both sides, the examination and cross-examination of all the witnesses, as well for the defendant as for the prosecution; it then stated the conviction, which was analogous to the entry of the verdict in the record of a trial upon an indictment; and, lastly, it stated the adjudication, which was the judgment of the justice passed upon the defendant for his offence, and which must have formed a part of every conviction, otherwise it might be quashed. 1 *Arch. J. P.* 368—371.

This being considered too lengthy and formal, and giving rise continually to objections and consequent litigation, it was thought advisable by stat. 3 G. 4, c. 23, s. 1, to give a general form of conviction, applicable to all cases where a particular form was not given by the statute creating the offence. This had the desirable effect of obviating objections, where the form given was strictly pursued; but still this general form was deemed unnecessarily prolix, as setting out the evidence, &c. Setting out the evidence no doubt enabled the court of King's Bench to judge whether all the facts necessary to constitute the offence were proved or not, and if not, that court might have quashed the conviction; but where the magistrates dismissed the information, in a case where the evidence appeared to the court sufficient to warrant a conviction, that court could not interfere, because the magistrates were necessarily the sole judges whether credence was to be given to the witnesses examined. And it being generally esteemed the province of the magistrates to judge, not only whether the evidence was to be believed, but also whether it was sufficient, (subject of course to an appeal to the quarter sessions,) it became a very usual custom afterwards, in statutes which created

FORMS.

(D.)

Warrant of Commitment for safe Custody, during an adjournment of the Hearing.

See this form, *ante*, p. 100.

(E.)

Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with.

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(F.)

Certificate of Non-appearance to be indorsed on the Defendant's Recognizance.

See this form, *ante*, p. 111.

Form of convictions and orders.

Ante, pp. 139, 140.
1 J. P. 372, - 368.

Ante, pp. 141 - 143.

XVII. And be it enacted, that in all cases of conviction where no particular form of such conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction have been therein given or not, it shall be lawful for the justice or justices who shall so convict to draw up his or their conviction on parchment or on paper in such one of the forms of conviction (I. 1—3) in the schedule to this Act contained as shall be applicable to such case, or to the like effect; and where an order shall be made and no particular form of order is or shall be given by the statute giving authority to make such order, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by whom such order is to be made to draw up the same in such one of the forms of orders (K. 1—3) in the schedule to this Act contained as may be applicable to such case, or to the like effect; and in all cases where by any Act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any

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Warrant of Commitment for safe Custody, during an adjournment of the Hearing.

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Recognizance for the Appearance of the Defendant, where the case is adjourned, or not at once proceeded with.

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(F.)

Certificate of Non-appearance to be indorsed on the Defendant's Recognizance.

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Form of convictions and orders.

Ante, pp. 130, 140.
1 J. P. 372, - 308.

Ante, pp. 141 -143.

XVII. And be it enacted, that in all cases of conviction where no particular form of such conviction is or shall be given by the statute creating the offence or regulating the prosecution for the same, and in all cases of conviction upon statutes hitherto passed, whether any particular form of conviction have been therein given or not, it shall be lawful for the justice or justices who shall so convict to draw up his or their conviction on parchment or on paper in such one of the forms of conviction (I. 1—3) in the schedule to this Act contained as shall be applicable to such case, or to the like effect; and where an order shall be made and no particular form of order is or shall be given by the statute giving authority to make such order, and in all cases of orders to be made under the authority of any statutes hitherto passed, whether any particular form of order shall therein be given or not, it shall be lawful for the justice or justices by whom such order is to be made to draw up the same in such one of the forms of orders (K. 1—3) in the schedule to this Act contained as may be applicable to such case, or to the like effect; and in all cases where by any Act of parliament authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying any

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1 J. P. 372, - 308.

Ante, pp. 141 - 143.

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Ante, pp. 139, 140.
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Ante, pp. 141 - 148.

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Given under my hand and seal, the day and year first above mentioned, at — in the [county] aforesaid.

J. S. (L. S.)

* Or, where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks*, say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or, "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c., as above, to the end.

(I. 2.)

Conviction for a Penalty, and in default of Payment Imprisonment.

} Be it remembered, that on the — day of — in to wit. { the year of our Lord — at — in the said [county] A. B. is convicted before the undersigned, [one] of her Majesty's justices of the peace for the said county, for that [he the said A. B. &c., stating the offence, and the time and place when and where it was committed]; and I adjudge the said A. B. for his said offence to forfeit and pay the sum of — [stating the penalty, and the compensation if any], to be paid and applied according to law, and also to pay to the said C. D. the sum of — for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next], I adjudge the said A. B. to be imprisoned in the [house of correction] at — in the said [county], [and there to be kept to hard labour] for the space of — unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction], shall be sooner paid.

Given under my hand and seal, the day and year first above mentioned, at — in the [county] aforesaid.

J. S. (L. S.)

(I. 3.)

Conviction when the Punishment is by Imprisonment, &c.

} Be it remembered, that on the — day of — in to wit. { the year of our Lord —, in the said [county], A. B. is convicted before the undersigned, [one] of her Majesty's justices of the peace for the said county, for that [he the said A. B., &c., stating the offence, and the time and place when and where committed]; and I adjudge the said A. B. for his said offence to be imprisoned in the [house of correction] at — in the said [county] [and there kept to hard labour] for the space of —, and I also adjudge the said A. B. to pay

*the said C. D. the sum of — for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before — next] then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf* I adjudge the said A. B. to be imprisoned in the said house of correction [and there kept to hard labour] for the space of — to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid.*

Given under my hand and seal, the day and year first above mentioned, at — in the county aforesaid.

J. S. (L. S.)

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks**, say, "inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family] or "that the said A. B. hath no goods or chattels whereon to levy the said sum for costs by distress], I adjudge," &c.

(K. 1.)

Order for Payment of Money to be levied by Distress, and in default of Distress, Imprisonment.

*} Be it remembered, that on — complaint was to wit. } made before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit on —, at —, the parties aforesaid appear before me the said justice, [or the said C. D. appears before me the said justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf which required him to be and appear here at this day before such justices of the peace for this said county as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do adjudge the said A. B. [to pay to the said C. D. the sum of — forthwith, or, on or before — next, or as the statute may require], and also to pay to the said C. D. the sum of — for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next] * I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf* I adjudge the said A. B. to be imprisoned in the [house of correction] at — in the said [county] [and there*

kept to hard labour] for the space of —, unless the said several sums, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction], shall be sooner paid.

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.

J. S. (L. S.)

* Or where the issuing of a distress warrant would be ruinous to the defendant or his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks²², say, "then, inasmuch as it hath now been made to appear to me [that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," or "that the said A. B. hath no goods or chattels whereon to levy the said sums by distress], I adjudge," &c.

(K. 2.)

Order for Payment of Money, and, in default of Payment, Imprisonment.

} Be it remembered, that on — complaint was to wit. } made before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred]; and now at this day, to wit on —, at —, the parties aforesaid appear before me the said justice [or the said C. D. appears before me the said justice, but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. has been duly served with the summons in this behalf which required him to be and appear here on this day before such justices of the peace for the said county as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now, having heard the matter of the said complaint, I do adjudge the said A. B. [to pay to the said C. D. the sum of — forthwith, or on or before — next, or as the statute may require], and also to pay to the said C. D. the sum of — for his costs in this behalf; and if the said several sums be not paid forthwith [or on or before — next], I adjudge the said A. B. to be imprisoned in the [house of correction] at — in the said county [there to be kept to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction] shall be sooner paid.

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.

J. S. (L. S.)

(K. 3.)

Order for any other matter where the disobeying of it is punishable with Imprisonment.

Be it remembered, that on — complaint was to wit. } made before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of — for that [stating the facts entitling the complainant to the order, with the time and place when and where they occurred], and now at this day, to wit, on —, at —, the parties aforesaid appear before me the said justice, [or the said C. D. appears before me the said justice, but the said A. B. although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here at this day, before such justices of the peace for the said county as should now be here, to answer to the said complaint, and to be further dealt with according to law], and now having heard the matter of the said complaint, I do therefore adjudge the said A. B. to [here state the matter required to be done], and if upon a copy of a minute of this order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual place of abode, he shall neglect or refuse to obey the same, in that case I adjudge the said A. B. for such his disobedience to be imprisoned in the [house of correction] at — in the said county [there to be kept to hard labour] for the space of — [unless the said order be sooner obeyed, if the statute authorize this]; and I do also adjudge the said A. B. to pay to the said C. D. the sum of — for his costs in this behalf; and if the said sum for costs be not paid forthwith [or on or before — next], I order the same to be levied by distress and sale of the goods and chattels of the said A. B. [and in default of sufficient distress in that behalf, I adjudge the said A. B. to be imprisoned in the said house of correction [and there kept to hard labour] for the space of — to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs shall be sooner paid].

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.
J. S. (L. s.)

(L.)

Order of Dismissal of an Information or Complaint.

Be it remembered, that on — information was to wit. } laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for

therefore to command you the said constable of — to take the said A. B., and him safely to convey to the [house of correction] at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying him to the said [house of correction] amounting to the further sum of —] shall be sooner paid; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.
J. S. (L. S.)

(O. 2.)

Warrant of Commitment on an Order in the first instance.

—: To the constable of — and to the keeper of the [house of correction] at — in the said [county] of —.

Whereas on — last past complaint was made before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [&c. as in the order], and afterwards, to wit on —, at —, the parties appeared before [me] the said justice [or as it may be in the order], and thereupon having considered the matter of the said complaint I adjudged the said A. B. to pay to the said C. D. the sum of —, on or before the — day of — then next, and also to pay to the said C. D. the sum of —, for his costs in that behalf; and I also thereby adjudged that if the said several sums should not be paid on or before the — day of — then next, the said A. B. should be imprisoned in the house of correction at — in the said county [and there kept to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying the said A. B. to the said house of correction] should be sooner paid: And whereas the time in and by the said order appointed for the payment of the said several sums of money hath elapsed, but the said A. B. hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you the said constable of — to take the said A. B. and him safely convey to the said house of correction at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction to receive the said A. B. into your custody in the said house of correction, there to imprison him [and keep him to hard labour] for the space of —, unless the said several sums [and the costs and charges of conveying him to the said house of correction, amounting to the further sum of —,] shall be

sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.
J. S. (L. S.)

XXIV. And be it enacted, that where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence,—or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act,—in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment (P. 1, 2) under his or their hand and seal or hands and seals, and requiring the constable or constables to whom the same shall be directed, to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough, or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases, where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress (P. 3, 4) in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed (P. 5) to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the

Commitment where the conviction is not for a penalty, nor the order for payment of money, and the punishment is by imprisonment, &c.

Post, p. 167.

Costs, how recovered.

Post, pp. 168, 169.

Post, p. 170.

imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

NOTE.

By the four preceding sections, the statute has provided for the execution of convictions for penalties and orders for the payment of money. By this section it provides for the execution of convictions and orders in other cases, where the offence is not punishable by a penalty, and where the order is not for payment of money, but the offence in the one case, and the disobedience of the order in the other, are punishable by imprisonment, with or without hard labour. In these cases, the justice who made the conviction or order, or any other justice of the same county, &c. may issue his warrant of commitment, upon which the defendant will be taken and imprisoned for the time mentioned in the adjudication and warrant, with or without hard labour, as adjudged. This warrant (P. 1, 2) may be issued by one justice, even in cases where the conviction or order is required to be by two; *sect. 29, post*;—it must be under his hand and seal;—it is directed to a constable, and to the keeper of the prison mentioned in the warrant;—and it requires the constable to take the defendant and convey him to the prison, and requires the keeper to receive and imprison him [and keep him to hard labour] for a certain time. If the defendant be present when this warrant is given to the constable to execute, the constable immediately takes him, and conveys him to the prison; if not present, the constable apprehends him, or if the defendant be within another jurisdiction, the constable may get the warrant backed (*see sect. 3, ante*, p. 106), and apprehend him there, and takes him to prison.

We have seen (*sect. 18, ante*, p. 151) that in all cases of summary convictions or orders, justices may, in their discretion, award costs to the prosecutor or claimant. If a conviction or order, such as above is mentioned, contain an award of costs to the prosecutor or claimant, such part of the conviction or order must be executed separately; and this section provides that such costs shall be levied by distress (P. 3, 4), and in default of distress, a warrant of commitment (P. 5) may issue, under which the imprisonment shall commence at the termination of that which the defendant is then undergoing for the principal offence, and shall continue for the time mentioned in the warrant, unless the costs be sooner paid. And this warrant of distress, &c. may be considered as subject to the same rules in every respect as the warrants mentioned in *sect. 19, &c. ante*, p. 152, &c.

FORMS.

(P. 1.)

Warrant of Commitment on a Conviction where the Punishment is by Imprisonment.

To the constable of —, and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas A. B. late of — [labourer], was this day duly convicted before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county] of —, for that [stating the offence as in the conviction], and it was thereby adjudged that the said A. B. for his said offence should be imprisoned in the house of correction at —, in the said county [and there kept to hard labour] for the space of —: These are therefore to command you the said constable of —, to take the said A. B. and him safely convey to the house of correction at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction to receive the said A. B. into your custody in the said house of correction, there to imprison him [and keep him to hard labour] for the space of —; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord — at —, in the [county] aforesaid.
J. S. (L. S.)

(P. 2.)

Warrant of Commitment on an Order where the disobeying of it is punishable by Imprisonment.

To the constable of —, and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas on — last past complaint was made before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of —, for that [&c., as in the order], and afterwards, to wit on —, at —, the said parties appeared before me [or as it may be in the order], and thereupon having considered the matter of the said complaint, I adjudged the said A. B. to [&c., as in the order], and that if, upon a copy of the minute of that order being duly served upon the said A. B. either personally, or by leaving the same for him at his last or most usual place of abode, he should neglect or refuse to obey the same, it was adjudged that in such case the said A. B. for such his disobedience should be imprisoned in the [house of correction] at —, in the said

[county] [and there kept to hard labour] for the space of —, [unless the said order should be sooner obeyed]: And whereas it is now proved to me that after the making of the said order a copy of the minute thereof was duly served upon the said A. B., but he then refused [or neglected] to obey the same, and hath not as yet obeyed the said order: These are therefore to command you, the said constable of —, to take the said A. B., and him safely to convey to the [house of correction] at — aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said [house of correction], to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of —, and for so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L. S.)

(P. 3.)

Warrant of Distress for Costs upon a Conviction where the Offence is punishable by Imprisonment.

To the constable of — and to all other peace officers in the said [county] of —.

Whereas A. B., of — [labourer], was on — last past duly convicted before the undersigned, [one] of her Majesty's justices of the peace in and for the said [county], for that [stating the offence as in the conviction], and it was thereby adjudged that the said A. B. for his said offence should be imprisoned in the [house of correction] at —, in the said [county], [and there kept to hard labour] for the space of —; and it was also thereby adjudged that the said A. B. should pay to the said C. D. the sum of — for his costs in that behalf; and it was thereby ordered that if the said sum of —, for costs, should not be paid [forthwith] the same should be levied by distress and sale of the goods and chattels of the said A. B.; [and it was adjudged that in default of sufficient distress in that behalf the said A. B. should be imprisoned in the said house of correction [and there kept to hard labour] for the space of — to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said [house of correction], should be sooner paid: And whereas the said A. B., being so convicted as aforesaid, and being required to pay the said sum of —, for costs, hath not paid the same or any part thereof, but therein hath made default: These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said

A. B., and if within the space of — days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to —, the clerk of the justices of the peace for the division of —, in the said [county], that he may pay the same as by law directed, and may render the surplus (if any), on demand, to the said A. B., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L.S.)

(P. 4.)

Warrant of Distress for Costs upon an Order where the disobeying of the Order is punishable with Imprisonment.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas on — last past complaint was made before the undersigned, [one] of her Majesty's justices of the peace in and for the said county of —, for that [&c. as in the order,] and afterwards, to wit on —, at —, the said parties appeared before me, as such justice as aforesaid [or as it may be in the order], and thereupon, having considered the matter of the said complaint, I adjudged the said A. B. to [&c. as in the order]; and that if upon a copy of the minute of that order being served upon the said A. B. either personally or by leaving the same for him at his last or most usual abode, he should neglect or refuse to obey the same, I adjudged that in such case the said A. B. for such his disobedience should be imprisoned in the house of correction at —, in the said county [and there kept to hard labour] for the space of —, unless the said order should be sooner obeyed]; and I thereby also adjudged the said A. B. to pay to the said C. D. the sum of —, for his costs in that behalf; and I ordered that if the said sum for costs should not be paid [forthwith], the same should be levied of the goods and chattels of the said A. B.; [and in default of sufficient distress in that behalf I thereby adjudged that the said A. B. should be imprisoned in the said house of correction [and there kept to hard labour] for the space of —, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said house of correction, should be sooner paid]: And whereas after the making of the said order a copy of the minute thereof was duly served upon the said A. B., but the said A. B. did not

then pay, nor hath he paid, the said sum of —, for costs or any part thereof, but therein hath made default: * These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B. and if within the space of — days next after the making of such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to —, the clerk of the justices of the peace for the division of —, in the said [county], that he may pay the same as by law directed, and may render the overplus, if any, on demand, to the said A. B. and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the county aforesaid.

J. S. (L. S.)

(P. 5.)

Warrant of Commitment for Want of Distress in either of the last two cases.

To the constable of —, and to the keeper of the [house of correction] at — in the said [county] of —.

Whereas [&c., as in the last two forms respectively, to the asterisk (*), and then thus]: And whereas afterwards, on the — day of — in the year aforesaid, I the said J. S. issued a warrant to the constable of — commanding him to levy the said sum of — for costs, by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are therefore to command you the said constable of — to take the said A. B., and him safely to convey to the [house of correction] at — aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of —, unless the said sum, and all costs and charges of the said distress, [and of the commitment and conveying of the said A. B. to the said house of correction,] amounting to the further sum of —, shall be sooner paid

unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of — in the year of our Lord —, at —, in the [county] aforesaid.

J. S. (L. S.)

XXV. And be it enacted, that where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed; and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

Imprisonment for a subsequent offence from what time.

NOTE.

By stat. 7 & 8 G. 4, c. 28, s. 10, whenever sentence is passed for felony, upon a person already imprisoned for another crime, the court may award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person was previously sentenced. It has been thought advisable, by this section, to make the same regulation as to summary convictions and orders.

In such cases, previously to this statute, the same effect was endeavoured to be attained, by not lodging the commitment for the second offence with the gaoler, until the first imprisonment was nearly at an end. This was liable to great abuse. It had the effect, also, of giving this discretionary power, as to the imprisonment for the second offence, to the constable, instead of giving it to the magistrates, in whom it ought to vest. This section, therefore, gives a discretionary power to the magistrates to order the punishment for the second offence to commence at the expiration of the imprisonment for the first, if they shall think fit to do so. But it at the same time makes it imperative on the constable to lodge the warrant of commitment for the second offence forthwith with the gaoler to whom it is directed, whether the imprisonment be deferred or not.

Costs upon
dismissal,
how re-
covered.

Infra.

Post, p. 173.

XXVI. And be it enacted, that where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress (Q. 1) on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment, such prosecutor or complainant may be committed (Q. 2) to the house of correction or common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

NOTE.

We have seen (*sect. 18, ante*) that in all cases of summary convictions or orders, justices may, in their discretion, award costs to the defendant, if they dismiss the information or complaint. If therefore an order of dismissal contain an award of costs to the defendant, this section provides that such costs shall be levied by distress (Q. 1); and in default of distress or payment, a warrant of commitment (Q. 2) may issue against the prosecutor or complainant, under which he may be imprisoned for a time not exceeding one calendar month, unless the costs, and the costs of the distress, and of the commitment and conveying the party to prison, be sooner paid. The proceedings are the same, with the exception of the forms, as those mentioned in *sect. 19 (ante, p. 152)* with respect to a warrant of distress against a defendant.

FORMS.

(Q. 1.)

Warrant of Distress for Costs upon an Order for Dismissal of an Information or Complaint.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas on — last past information was laid [or complaint was made] before the undersigned, [one] of her Majesty's justices of the peace in and for the said county, for that [&c., as in the order of dismissal]; and afterwards, to wit,

on —, at —, both parties appearing before me in order that I should hear and determine the same, and the several proofs adduced to me in that behalf being by me duly heard and considered, and it manifestly appearing to me that the said information [or complaint] was not proved, I therefore dismissed the same, and adjudged that the said C. D. should pay to the said A. B. the sum of — for his costs incurred by him in his defence in that behalf; and I ordered that if the said sum for costs should not be paid [forthwith] the same should be levied of the goods and chattels of the said C. D.; [and I adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the house of correction at — in the said county, and there kept to hard labour, for the space of —, unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said C. D. to the said house of correction, should be sooner paid]: (*) and whereas the said C. D., being now required to pay unto the said A. B. the said sum for costs, hath not paid the same or any part thereof, but therein hath made default: these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D.; and if, within the space of — days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to — the clerk of the justices of the peace for the division of — in the said [county], that he may pay and apply the same as by law directed, and may render the overplus, (if any), on demand, to the said C. D., and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at — in the [county] aforesaid.
J. S. (L. S.)

(Q. 2.)

Warrant of Commitment for Want of Distress in the last Case.

To the constable of —, and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas [&c., as in the last form to the asterisk (*), and then thus]: and whereas afterwards, on the — day of — in the year aforesaid, I the said justice issued a warrant to the constable of —, commanding him to levy the said sum of — for costs by distress and sale of the goods

and chattels of the said C. D. : and whereas it appears to me as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: these are therefore to command you the said constable of — to take the said C. D., and him safely convey to the house of correction at — aforesaid, and there deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction to receive the said C. D. into your custody in the said house of correction, there to imprison him [and keep him to hard labour] for the space of —, unless the said sum, and all costs and charges of the said distress [and of the commitment and conveying of the said C. D. to the said house of correction], amounting to the further sum of —, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.
J. S. (L. S.)

Warrants of distress or commitment after appeal against a conviction or order.

Costs of appeal, how recovered.

XXVII. And be it enacted, that after an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or justices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough, or place, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought; and if upon any such appeal the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate (R.) that such costs

have not been paid ; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress (S. 1) in manner aforesaid, and in default of distress he or they may commit (S. 2) the party against whom such warrant shall have issued in manner hereinbefore mentioned for any time not exceeding three calendar months, unless the amount of such costs, and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid. *Post, p. 177.*

NOTE.

It must be observed that there is no general law, giving costs upon an appeal against a conviction or order, or giving a remedy for them ; whether the party succeeding shall be entitled to costs or not, must depend entirely upon the statute giving or regulating the appeal, in each particular case. But if the statute give costs, and the sessions order them, the order shall direct them to be paid to the clerk of the peace, to be by him paid over to the party entitled to them, and shall state within what time they shall be paid. And if they be not paid within that time, this section gives a very easy remedy for them, in all cases where the party is not bound by recognizance to pay them. The party entitled to them has only to obtain a certificate (R.) from the clerk of the peace that the costs are not paid, and upon producing that to any justice of the peace for the county, &c., he may grant his warrant of distress (S. 1) to levy them. No previous summons is necessary, nor is any order of the justice required, there being already an order of the court of quarter sessions for them. In fact, the warrant of distress is a mode of executing the order of the court of quarter sessions, instead of obliging the party to enforce the payment by indietment (the only remedy at the common law), or by such other remedy as the statute giving or regulating the appeal may have directed. In default of distress, the justice may grant his warrant of commitment (S. 2) against the party, ordering him to be imprisoned for any time not exceeding three calendar months, unless such costs, together with the costs of the distress, and the costs of the commitment and conveying to prison (if ordered), shall be sooner

paid. The mode of proceeding on these warrants, is the same as under the 19th and 21st sections, *ante*, pp. 152, 157.

It is objected (S.), that the power here given to justices out of sessions, of executing the original conviction or order, should have been given to the justices in quarter sessions. But independently of the harshness of granting a warrant of distress by the sessions, before payment of the penalty, &c. was demanded, there would be this inconvenience, that if no distress could be found, the prosecutor in nine times out of ten would be obliged to wait until the next sessions, before he could obtain a warrant of commitment. It is infinitely better to remand the case to the inferior tribunal, that they may execute their own judgment, and more analogous to the proceedings on writs of error in the superior courts.

I have now noticed all the objections (S.) made to this second statute; and I trust that I have satisfactorily proved to my readers that there is not the slightest ground or pretence for any one of them.

FORMS.

(R.)

Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.

Office of the clerk of the peace for the [county] of —.

(Title of the Appeal).

I hereby certify that at a court of general quarter sessions of the peace holden at —, in and for the said [county] on — last past, an appeal by A. B. against a conviction [or order] of J. S., esquire, one of her Majesty's justices of the peace for the said [county], came on to be tried, and was then heard and determined, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of — for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace of the said county on or before the — day of — instant, to be by him handed over to the said [respondent]; and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order. Dated the — day of —, 185—.

G. H.

[Deputy] Clerk of the Peace.

(S. 1.)

Warrant of Distress for Costs of an Appeal against a Conviction or Order.

To the constable of —, and to all other peace officers in the said [county] of —.

Whereas [&c., as in the warrants of distress, N. 1, 2, ante, to the end of the statement of the conviction or order, and then thus]: and whereas the said A. B. appealed to the court of general quarter sessions of the peace for the said county against the said conviction [or order], in which appeal the said A. B. was the appellant, and the said C. D. [or J. S., esquire, the justice of the peace who made the said conviction or order] was the respondent, and which said appeal came on to be tried, and was heard and determined at the last general quarter sessions of the peace for the said county holden at —, on —, and the said court of general quarter sessions thereupon ordered that the said conviction [or order] should be confirmed [or quashed], and that the said [appellant] should pay to the said [respondent] the sum of — for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace of the said [county] on or before the — day of —, 18—, to be by him handed over to the said [C. D.]: and whereas the [deputy] clerk of the peace of the said [county] hath, on the — day of — instant, duly certified that the said sum for costs had not then been paid: (*) these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said [A. B.], and if within the space of — days next after the making of such distress the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to —, the clerk of the justices of the peace for the division of — in the said [county], that he may pay and apply the same as by law directed, and if no such distress can be found, then that you certify the same unto me, to the end that such proceedings may be had therein as to the law doth appertain.

Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. N. (L. S.)

(S. 2.)

Warrant of Commitment for Want of Distress in the last Case.

To the constable of —, and to the keeper of the [house of correction] at —, in the said [county] of —.

Whereas [&c., as in the last form to the asterisk (*) and then

thus] : and whereas afterwards, on the — day of — in the year aforesaid, I the undersigned issued a warrant to the constable of —, commanding him to levy the said sum of — for costs by distress and sale of the goods and chattels of the said A. B. : and whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said [A. B.], but that no sufficient distress whereon to levy the sum above mentioned could be found : these are therefore to command you the said constable of — to take the said A. B., and him safely to convey to the [house of correction] at — aforesaid, and there deliver him to the said keeper thereof, together with this precept ; and I do hereby command you the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], there to imprison him [and keep him to hard labour] for the space of —, unless the said sum, and all costs and charges of the said distress [and of the commitment and conveying of the said A. B. to the said house of correction], amounting to the further sum of —, shall be sooner paid unto you the said keeper, and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.

J. N. (L. S.)

On payment of penalty, &c. distress not to be levied, or the party, if imprisoned, to be discharged.

J. P. 381.

XXVIII. And be it enacted, that in all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same ; and in all cases in which any person shall be imprisoned as aforesaid for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

NOTE.

This section was necessary, to give authority to the constable to receive the penalty, &c., and costs from the defendant, an authority which he had not by the warrant of distress. It was necessary also, to authorize the keeper of the prison to receive the penalty, &c. and costs from the defendant, when in his custody for a penalty, &c., and thereupon to discharge him without a liberate or discharge from the committing magistrate; and which he was not authorized to do, until by stat. 5 G. 4, c. 18, s. 3 (from which this part of the above section is borrowed), authority in this respect was given to him. The constable in the one case, and the keeper of the prison in the other, must forthwith pay over any money they thus receive to the clerk of the petty sessional division, in which the justice, who issued the warrant, usually acts. *Sect. 31 post.*

XXIX. And be it enacted, that in all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid, it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more justices; and after the case shall have been so heard and determined, one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

One justice may issue summons or warrant, &c. and after conviction or order, may issue warrant of distress, &c.

NOTE.

The hearing upon an information or complaint, must be before one or two justices, according to the direction of the statute on which such information or complaint is founded; and where the statute contains no such direction, the hearing may be before one justice. *Sect. 12, ante*, p. 128. But in all other proceedings before or after the hearing,—the receiving the information or complaint,—the issuing of the summons or warrant to apprehend,—the issuing of the summons or warrant to compel the attendance of witnesses,—the adjournment of the hearing, when a sufficient number of justices are not present, and committing or bailing the defendant in the mean time,—and the issuing of the warrants of distress or commitment upon the conviction or order when made,—all these may be done by one justice of the county, &c.; and whether he be the justice, or one of the justices who shall hear or have heard the case, is wholly immaterial. A similar provision to this was made by stat. 3 G. 4, c. 23, s. 2. See 1 *Arch. J. P.* 359. 360. 373. 376.

The proviso at the end of this section, is merely in affirmation of a well known rule of the common law, namely, that where a judicial act is to be done by two or more, they must all be present and acting together during the whole of the hearing and determination of the case.

Regulations
as to the
payment of
clerk's fees.

XXX. And be it enacted, that the fees to which any clerk of the peace, clerk of the special sessions, or clerk of the petty sessions, or clerk to any justice or justices out of sessions, shall be entitled, shall be ascertained, appointed, and regulated in manner following; (that is to say,) the justices of the peace at their quarter sessions for the several counties, ridings, divisions of counties, and liberties throughout *England* and *Wales*, and the council or other governing body of every borough in *England* and *Wales*, shall, from time to time as they shall see fit respectively, make tables of the fees which in their opinion should be paid to the clerks of the peace, to the clerks of special and petty sessions, and to the clerks of the justices of the peace within their several jurisdictions, and which said tables respectively, being signed by the chairman of every such court of quarter sessions, or by the mayor or other head officer of any such borough respectively, shall be laid before her Majesty's principal secretary of state; and it shall be lawful for such secretary of state, if he thinks fit, to alter such table or tables

of fees, and to subscribe a certificate or declaration that such fees are proper to be demanded and received by the several clerks of the peace, clerks of special sessions and petty sessions, and the clerks to the several justices of the peace throughout *England* and *Wales*; and such secretary of state shall cause copies of such table or set of tables of fees to be transmitted to the several clerks of the peace throughout *England* and *Wales*, to be by them distributed to the several clerks of special sessions and petty sessions and to the clerks to the justices within their several districts respectively; and if after such copy shall be received by such clerks or clerk he or they shall demand or receive any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of twenty pounds, to be recovered by action of debt in any of the superior courts of law at *Westminster*, by any person who will sue for the same: provided always, that until such table or set of tables shall be framed and confirmed and distributed as aforesaid, it shall be lawful for such clerk or clerks to demand and receive such fees as they are now by any rule or regulation of a court of quarter sessions or otherwise authorized to demand and receive.

NOTE.

Well digested tables of fees, to be taken by the clerks of special sessions, and the clerks of justices at petty sessions and elsewhere, which would create a uniformity of charge throughout the kingdom, would be most desirable, not only to the public, but to the clerks themselves. There is no reasonable hope, however, of any thing of the kind taking place: the fees that would be but a scanty remuneration in a petty sessional division in an agricultural district, would yield a large income in a populous manufacturing or trading city or borough. And perhaps, when such tables of fees are about to be made, the cities and boroughs on the one hand, and the special and petty sessions of the counties on the other hand, might be classed separately, and tables of fees made for each class; and I beg to add that in my humble judgment, those fees should be set down with no niggard hand, so that professional men of respectability, of talent and sound judgment, and possessing a fair

knowledge of the criminal law, and of the other branches of the law administered by justices of the peace, may, as at present, be always willing to undertake the office, and afford the aid of their learning, their regularity and business habits, to the justices for whom they act. The office also, and the tenure of it, ought in counties, as it is in boroughs, to be settled by legislative enactment, so as to ensure the permanent services of good, experienced, and efficient clerks.

To whom
penalties, &c.
to be paid.

XXXI. And be it enacted, that in every warrant of distress to be issued as aforesaid, the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act; and if any person convicted of any penalty or ordered by a justice or justices of the peace to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction or order as aforesaid for non-payment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk; and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk, and every such gaoler or keeper of a prison, shall keep a true and exact account of all such monies received by him, of whom

and when received, and to whom and when paid, in the form (T.) in the schedule to this Act annexed, or to the like effect, and shall once in every month render a fair copy of every such account unto the justices who shall be assembled at the petty sessions for the division in which such justice or justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf.

NOTE.

This clause was introduced for the purpose of insuring great regularity in accounting for penalties, &c. received, arising from summary convictions and orders. The constables and the gaolers are usually the persons who receive these monies. Every sum of money levied by a constable under a warrant of distress,—every sum received by him in payment of penalty, &c. and costs, in order to stay the execution of a warrant of distress,—and every sum received by him from a defendant whom he has taken, under a commitment for a penalty, &c. and costs,—must be paid by him to the clerk of the petty sessional division, in which the justice issuing the warrant usually acts. So if a party, in prison for not paying a penalty, pay it with costs to the keeper of the prison, the keeper of the prison must forthwith pay it in like manner to the clerk of the petty sessional division in which the justice who issued the warrant of commitment usually acts. It is the duty of such clerk, then, as soon as he receives any such sum, to pay it over to such person, and in such proportions, as the statute creating the offence, or regulating the prosecution of it, directs; and if there be no such direction in the statute, the clerk must pay it over to the treasurer of the county. Of all this, the clerk and the gaoler respectively must keep an account (T.), and render a fair copy thereof to the justices assembled at the petty sessions for the division, holden on or next after the first Monday in every month; and the clerk must also send or deliver every return so made by him, to the clerk of the peace of the county, &c. So that not only may these accounts be checked and audited by the justices at petty sessions every month, but by the justices at quarter sessions every quarter.

XXXII. And be it enacted, that the several forms in the schedule to this Act contained, or forms to the like effect, shall be deemed good, valid, and sufficient in law.

Forms in the
schedule
valid.

NOTE.

This section does not oblige the justices to adopt the forms here given; it merely enacts that these forms, or forms to the like effect, if adopted, shall be deemed valid. And perhaps justices, in prudence, will adopt the forms here given, on that account.

XXXIII. And be it enacted, that any one of the magistrates appointed or hereafter to be appointed to act at any of the police courts of the metropolis, and sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, and sitting at a police court, or other place appointed in that behalf, shall have full power to do alone whatsoever is authorized by this Act to be done by any one or more justice or justices of the peace; and that the several forms herein-after mentioned may be varied, so far as it may be necessary to render them applicable to the police courts aforesaid, or to the court or other place of sitting of such stipendiary magistrate; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled "An Act for improving the police in and near the metropolis," or in an Act passed in the third year of the reign of her present Majesty, intituled "An Act for further improving the police in and near the metropolis," or in an Act passed in the same year of the reign of her present Majesty, intituled "An Act for regulating the police courts in the metropolis," or in an Act passed in the fourth year of the reign of her present Majesty, intituled "An Act for better defining the powers of justices within the metropolitan police district."

Metropolitan
police magis-
trates and
stipendiary
magistrates
may act
alone.



The lord mayor, or any alderman of London, may act alone.

Nothing to affect powers, &c. contained in 9 & 3 Vict. c. 94.

To what this Act shall not extend.

XXXIV. And be it enacted, that it shall be lawful for the lord mayor of the city of *London*, or for any alderman of the said city, for the time being, sitting at the Mansion House or Guildhall justice rooms in the said city, to do alone any act, at either of the said justice rooms, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice; and that nothing in this Act contained shall alter or affect in any manner whatsoever any of the powers, provisions, or enactments contained in an Act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the police in the city of *London*."

XXXV. And be it enacted, that nothing in this Act shall extend or be construed to extend to any warrant or order for the removal of any poor person who is or shall become chargeable to any parish, township, or place; nor to any complaints or orders made with respect to lunatics, or the expenses incurred for the lodging, maintenance, medicine, clothing, or care of any lunatic or insane person; nor to any information or complaint or other proceeding under or by virtue of any of the statutes relating to her Majesty's revenue of excise or customs, stamps, taxes, or post-office; nor shall anything in this Act extend or be construed to extend to any complaints, orders, or warrants in matters of bastardy made against the putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of warrants for compelling the appearance of such putative father or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same; nor shall any thing in this Act extend to any proceedings under the Acts of parliament regulating or otherwise relating to the labour of children and young persons in mills or factories.

NOTE.

Orders of removal are not within the scope of this Act of parliament; they are made *ex parte*, and their truth or validity cannot be tried by justices out of sessions.

Lunatic orders are, for the same reason, excluded from the statute.

Summary convictions for offences relating to the excise, customs, stamps, taxes, and post office, are excluded, because the officers in these departments are used to and have a confidence in their respective modes of proceeding, and would not exchange their practice, as established by their Acts of parliament, for any other that could be suggested.

Bastardy orders are also excluded; and any person who knows and understands the laws upon that subject, and the nature of the forms belonging to it, which are made valid by Act of parliament, will readily conceive how much better it is to adhere to the law as it is, and its forms, than to introduce a new system of practice upon the subject. This statute, however, expressly extends to the backing of the warrant for compelling the appearance of the putative father,—to the backing of the warrants of distress,—to the levying of sums ordered to be paid,—and to the imprisonment of the defendant for non-payment of the same. *Supra*.

And as to convictions under the Factory Acts, the whole law in this respect is now very usually administered by the factory inspectors, who have a concurrent jurisdiction in such matters with the justices of the peace. And these factory inspectors were so used to their own mode of proceeding, and (as they conceived) had got it into such admirable working order, that they begged that their proceedings might be excluded from the operation of this Act; and it was conceded to them.

As to other cases, not here mentioned, which are or are not within this Act, see the note to sect. 14, *ante*, p. 136.

XXXVI. And be it enacted, that the following statutes and parts of statutes shall from and after the day on which this Act shall commence and take effect, be and the same are hereby repealed; (that is to say,) so much of a certain Act of parliament made and passed in the eighteenth year of the reign of her Majesty Queen Elizabeth, intituled “An Act to redress disorders in common informers,” as relates to exhibiting an information and pursuing the same in person, and not by an attorney or deputy; and so much of a certain other Act made and

Repeal of
statutes.

18 Eliz. c. 5,
s. 1, in part.

- 31 Eliz. c. 5, passed in the thirty-first year of the reign of her said Majesty Queen Elizabeth, intituled "An Act concerning informers," as relates to the time limited for exhibiting an information for a forfeiture upon any penal statute; and so much of a certain other Act made and passed in the twenty-seventh year of the reign of his Majesty King George the Second, intituled "An Act for the more easy and effectual proceeding upon distresses to be made by warrants of justices of the peace," as relates to such distresses; and so much of an Act made and passed in the eighteenth year of his late Majesty King George the Third, intituled "An Act for the payment of costs to parties on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," as relates to such costs on the said complaints; and so much of a certain other Act made and passed in the thirty-third year of the reign of his said late Majesty King George the Third, intituled "An Act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates," as relates to the execution of such warrants of distress; and a certain other Act made and passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act to facilitate summary proceedings before justices of the peace and others;" and a certain other Act made and passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act for the more effectual recovery of penalties before justices and magistrates on conviction of offenders, and for facilitating the execution of warrants by constables;" and so much of a certain Act made and passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled
- 31 Eliz. c. 5, in part.
- 27 Geo. 2, c. 20, s. 1, 2.
- 18 G. 3, c. 19, ss. 1, 2, 3, 5.
- 33 G. 3, c. 55, s. 3.
- 3 G. 4, c. 23,
- 5 G. 4, c. 18.
- 6 & 7 W. 4, c. 114, s. 2.

“An Act for enabling persons indicted for felony to make their defence by counsel or attorney,” as relates to the right of persons accused, in cases of summary convictions, to make their defence, and to have all witnesses examined and cross-examined by counsel or attorney; and all other Act or Acts or parts of Acts which are inconsistent with the provisions of this Act, save and except so much of the said several Acts as repeal any other Acts or parts of Acts, and also except as to proceedings now pending to which the same or any of them are applicable.

XXXVII. And be it enacted, that the town of *Berwick-upon-Tweed* shall be deemed to be within *England* for all the purposes of this Act; but that nothing in this act shall extend or be construed to extend to *Scotland* or *Ireland*, or to the Isles of *Man*, *Jersey*, *Guernsey*, *Allderney*, or *Sark*, save and except the several provisions respecting the backing of warrants contained in an Act of parliament passed in this present session, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within *England* and *Wales* with respect to persons charged with indictable offences,” and incorporated into this Act as aforesaid.

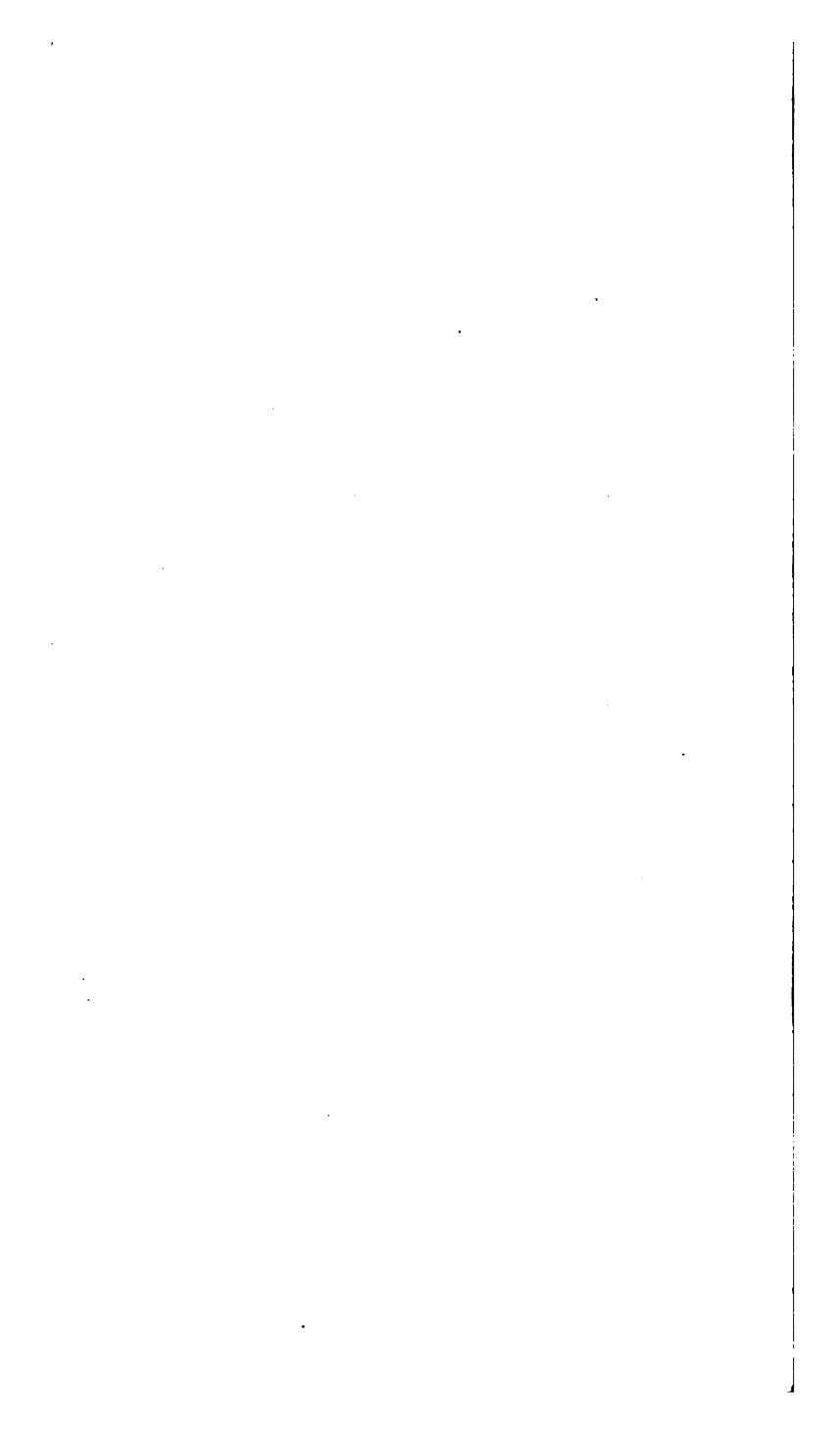
Act to extend to Berwick, but not to Scotland, Ireland, &c.

XXXVIII. And be it enacted, that this Act shall commence and take effect from the second day of October, in the year of our Lord one thousand eight hundred and forty-eight.

Commencement of Act.

XXXIX. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of parliament.

Act may be amended, &c. this session.



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OF

STATUTE 11 & 12 VICTORIA, c. 44.

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For an act done by him, without jurisdiction, or exceeding his jurisdiction, an action may be maintained without such allegation;—but not for an act done under a conviction or order, until after such conviction or order shall have been quashed; nor for an act done under a warrant to compel an appearance, if a summons were previously served and not obeyed; 2.

If one justice make a conviction or order, and another grant a warrant upon it, the action must be brought against the former, and not the latter, for a defect in the conviction or order; 3.

No action for issuing a distress warrant for a poor rate, by reason of any defect in the rate, or that the party is not rateable. No action against justices, for the manner in which they exercise a discretionary power; 4.

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11 & 12 VICTORIA, CAP. XLIV.

An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in execution of their Office.
[14th August, 1848.]

SECTION I. WHEREAS it is expedient to protect justices of the peace in the execution of their duty: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that every action hereafter to be brought against any justice of the peace for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause; and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

Preamble.

For an act by a justice of peace, within his jurisdiction, the action shall be case, and it shall be alleged to have been done maliciously, and without probable cause.
2 J. P. 42, 46.

NOTE.

Before this statute, if a conviction had been actually quashed, then, by stat. 43 G. 3, c. 141, s. 1, in any action brought against the justice on account of it, or on account of any act, matter, or thing done by him, for the levying any penalty, apprehending of the party, or otherwise carrying the conviction into effect, the plaintiff could not recover more than 2*d.* damages, besides the amount of the penalty (if any had been levied), nor any costs of suit, unless the action were an action on the case, and the declaration expressly stated that the acts were done maliciously, and without reasonable or probable cause. And that Act was holden not to extend to cases where the justice had acted in a matter out of his jurisdiction, but was confined entirely to actions for something

irregularly done by him of which he had jurisdiction. But why it should be confined to cases where the conviction had been actually quashed, I never could understand. One would imagine that the magistrate would be entitled to more favour and indulgence, where it had not been decided that his proceedings were wrong, than where that had been decided, and his proceedings actually quashed. In adopting the provisions of this statute 43 G. 3, c. 141, therefore, the present section very properly makes no distinction between cases where the conviction or proceeding has been quashed, and where it has not; in both cases, if the act complained of were done by the magistrate in a matter of which he had jurisdiction, the action must be an action on the case, and the declaration must allege the act to have been done maliciously and without reasonable and probable cause, and the allegation must be proved as laid. As to the provision relating to the damages, in the statute 43 G. 3, c. 141, s. 1, it will be found to be adopted in a subsequent part of this Act.

The term "declaration" in the above section, will no doubt be holden to apply to the summons in actions in the county courts, the summons there being in the nature of a declaration, as "stating the substance of the action." See 9 & 10 Vict. c. 95, s. 50. This appears clearly from the 14th section of this statute, *post*, p. 205.

For an act done by him, without jurisdiction or exceeding his jurisdiction, an action may be maintained without such allegation;

but not for an act done under a conviction or order, until after such conviction or order shall have been quashed.

II. And be it enacted, that for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause: provided nevertheless, that no such action shall be brought for any thing done under such conviction or order until after such conviction shall have been quashed, either upon appeal or upon application to her Majesty's court of Queen's Bench; nor shall any such action be brought for any thing done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction

or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for any thing done under such warrant.

Nor for an act done under a warrant to compel appearance, if a summons were previously served and not obeyed.

NOTE.

This section makes a marked distinction between an act done by a magistrate in a matter of which he had no jurisdiction, or in which he exceeded his jurisdiction, and an act irregularly done in a matter of which he has jurisdiction. Where a magistrate has no jurisdiction, his act is no more than that of any ordinary individual, done without any authority or pretence of right; and the party injured by such act, has the same remedy by action against the one, as against the other. But the legislature have thought it right, that it should first be ascertained whether the act of the justice was really done in a matter of which he had no jurisdiction, or in respect of which he exceeded his jurisdiction, before such an action should be brought against him, and not to leave that matter to be decided at *nisi prius*, when possibly it might be decided in favour of the justice, after he had been put to all the expense of his defence. It is provided therefore by the present section that the action shall not be brought for anything done under a conviction or order, until such conviction shall have been quashed; nor for any thing done under a warrant to compel an appearance, followed by a conviction or order, until the conviction or order be quashed; nor for any thing done under such warrant, not followed by a conviction or order, or under a warrant for an alleged indictable offence, if a summons had been previously served, and not obeyed.

It has been decided that where a conviction was drawn up for a penalty only, without mention of costs, and the distress warrant was afterwards drawn up and executed for both penalty and costs, the latter was an excess of jurisdiction in the justice who signed it, and that trespass, not case, was the proper remedy. *Leary v. Patrick et al.*, 14 *Shaw's J. P.* 334, 15 *Law Times*, 203.

It is objected (S.), that in cases where the certiorari is taken away, and the statute gives no appeal, no action will lie against the magistrate, inasmuch as his conviction or order cannot in such a case be quashed. This is a mistake: this section relates only to cases in which the justice acts without jurisdiction, or exceeds it; and where he so acts, the court of Queen's Bench will grant a certiorari to bring his conviction or order, &c. before them, to have it quashed, notwithstanding the certiorari may be expressly taken away by statute. *R. v. J.J. of Somersetshire*, 5 B. & C. 816. This is a point familiar to crown lawyers.

If one justice make a conviction or order, and another grant a warrant upon it, the action must be brought against the former, not the latter, for a defect in the conviction or order.

III. And be it enacted, that where a conviction or order shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace *bonâ fide* and without collusion, no action shall be brought against the justice who so granted such warrant by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices, who made such conviction or order.

NOTE.

It often occurs in practice that the justice who issues the distress warrant or commitment on a conviction or order, is not one of the justices by whom such conviction or order was made. And still, if there was any defect in the conviction or order, which appeared also on the face of the warrant, the action must hitherto have been brought against the justice or justices by whom the warrant was signed. This was obviously unjust, and made it a perilous matter for a justice to issue a warrant on another's conviction. The law is therefore altered in this respect by this section, so as to make a justice answerable for his own errors only.

No action for issuing a distress warrant for a poor rate by reason of any defect in the rate, or that the party is not rateable, 2 J. P. 43.

IV. And be it enacted, that where any poor rate shall be made, allowed, and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant, by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein;

and that in all cases where a discretionary power shall be given to a justice of the peace by any Act or Acts of parliament, no action shall be brought against such justice for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power.

No action against justices for the manner in which they exercise a discretionary power.
2 J. P. 43.

NOTE.

The clause here as to distresses for poor rates was perfectly necessary. Many distressing cases have occurred where justices, granting a warrant of distress for a poor rate, have been holden liable to an action, not for any irregularity in the warrant itself, but for some defect in the rate. Where a magistrate granted a warrant of distress to levy the amount of poor rates against a particular person, which were levied accordingly; and it turned out that the party, although rated in respect of land in the parish, had no land in the parish, his land being in an adjoining parish: it was holden that the party might maintain an action of trespass against the justice. *Weaver v. Price et al.* 3 B. & Adolph. 409. *S. P. Furnley v. Worthington*, 10 Law J. 81. But this really is not a fair way of trying the validity of a rate, or the fact of a party's rateability; if he wish to contest that, let him appeal against the rate itself.

As to the cases in which the legislature have thought proper to confide a discretionary power to justices of the peace, it would be very unfair if they should be holden liable for the manner in which they exercise their discretion in that respect. See *Bassett v. Godschall*, 3 Wils. 121.

V. And whereas it would conduce to the advancement of justice and render more effective and certain the performance of the duties of justices, and give them protection in the performance of the same, if some simple means, not attended with much expense, were devised by which the legality of any act to be done by such justices might be considered and adjudged by a court of competent jurisdiction, and such justice enabled and directed to perform it without risk of any action or other proceeding being brought or had against him; be it therefore enacted, that in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act

If a justice refuse to do an act, the court of Queen's Bench may by rule order him to do it, and no action shall be brought against him for doing it.

to be done to apply to Her Majesty's court of Queen's Bench, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid.

NOTE.

This will be found a most useful provision. In all cases where the law was doubtful upon any subject brought under the consideration of justices of the peace, they have often declined to interfere, fearing that they might render themselves liable to an action. It was with a view of remedying this, that some years since I introduced into a bill relating to writs of mandamus (6 & 7 Vict. c. 67), drawn by me for the then attorney-general, a clause prohibiting any action from being brought, or any other proceeding had, against justices or others, for anything done by them in obedience to a peremptory writ of mandamus. The legislature, however, by the above section, have provided as efficient a remedy, and one very much more desirable, because more simple, and less expensive. In matters of doubtful law the parties may now contest the matter at a small expense, and obtain the opinion of her Majesty's court of Queen's Bench upon it; and after the validity of the act required of the justice is thus determined, the justice may perform it without the hazard of an action being brought against him for doing so. And where a person rated to a highway rate neglected to appeal against it in time, but upon being summoned before a justice for not paying it, showed a seemingly good ground of exemption, and the justice therefore refused to issue a distress warrant against him: upon an application for a rule that the justice should issue his distress warrant, the court held that the party was liable to the rate, as he had not appealed against it, and they therefore made the rule absolute. *R. v. J.J. of Oxfordshire*, 18 *Law J.* 222, *m.*

The court, however, will not in all cases interfere under this

section: in cases of much complexity or difficulty, or where the question is of such importance that the parties ought to have their right of appealing to a higher tribunal, in case they should be dissatisfied with the decision of the court of Queen's Bench, that court will not in general interfere, but will leave the party to his remedy by *mandamus*.

The court in one case are reported to have granted the rule in the alternative, either that a rule under this section, or that a *mandamus*, should issue. *R. v. JJ. of Great Yarmouth*, 14 *Shaw's J. P.* 320.

VI. And be it enacted, that in all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order, which, either before or after the granting of such warrant, shall have been or shall be confirmed upon appeal, no action shall be brought against such justice who so granted such warrant, for any thing which may have been done under the same, by reason of any defect in such conviction or order.

After conviction or order confirmed on appeal, no action for anything done under a warrant upon it.

NOTE.

This provision was much wanted. Parties, after appealing against a conviction, or order, and having a decision against them, were in the common practice of trying the matter of law again, in an action against the justice who might grant a warrant of distress or commitment to execute such conviction or order. And justices have often been openly threatened with an action, to intimidate them, and prevent them granting warrants in such cases. The legislature, by the present section, have deemed one decision as to the validity of a conviction or order sufficient to warrant the magistrate's proceeding to have them executed, without fear or hazard of an action.

VII. And be it enacted, that in all cases where by this Act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought, it shall be lawful for a judge of the court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet.

If an action be brought where by this Act it is prohibited, a judge may set aside the proceedings.

NOTE.

This section, also, will operate as a great relief to justices against whom an action may be brought, and will be of advantage, also, to the party bringing the action. If the action were allowed to proceed to its ordinary conclusion, the plaintiff would be defeated, and have the costs of the action to pay; and the justice, although he might succeed, might not always be fortunate enough to obtain payment of his costs from the plaintiff.

Limitation
of action.

VIII. And be it enacted, that no action shall be brought against any justice of the peace for any thing done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed.

NOTE.

This is the same time of limitation as formerly. 24 G. 2, c. 24, s. 8.

Notice of
action.

IX. And be it enacted, that no action shall be commenced against any such justice of the peace until one calendar month at least after a notice in writing of such intended action shall have been delivered to him, or left for him at his usual place of abode, by the party intending to commence such action, or by his attorney or agent, in which said notice the cause of action, and the court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent.

NOTE.

This is the same in substance as the former provision upon the same subject in stat. 24 G. 2, c. 24, s. 1.

Venue.

X. And be it enacted, that in every such action the venue shall be laid in the county where the act com-

plained of was committed, or in actions in the county court the action must be brought in the court within the district of which the act complained of was committed, and the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse, or justification in evidence under such plea, at the trial of such action: provided always, that no action shall be brought in any such county court against a justice of the peace for any thing done by him in the execution of his office, if such justice shall object thereto; and if within six days after being served with a summons in any such action such justice, or his attorney or agent, shall give a written notice to the plaintiff in such action that he objects to being sued in such county court for such cause of action, all proceedings afterwards had in such county court in any such action shall be null and void.

Plea and evidence under it.

NOTE.

This provision, as to the venue, and the plea and evidence, in the superior courts, is the same as that formerly established by stat. 21 Jac. 1, c. 12, s. 5. *And see 7 Jac. 1, c. 5.* The only difference now is, that by the rules of the superior courts the words "by statute" must be written in the margin of the plea before it is delivered.

As to what is here mentioned with respect to actions in the county court, it was thought right to give justices the option of allowing themselves to be sued there or not, as they may think fit. Justices may possibly not wish to have the validity of their acts decided upon by the judge of a county court; however good a lawyer such judge may be in the department of the profession in which he was in the habit of practising, he may not have, probably, an intimate knowledge of the criminal law, or of the duties of justices and the law which regulates them.

It is objected (S.) to the proviso relating to the county court, that it is "of a most extraordinary, anomalous and doubtful character;"—and the objector adds, that "the power thus conferred upon justices can be made an easy mode of stifling small actions, and will thus be a premium to injustice in numberless cases;"—and again, "why the county court should thus be lightly treated, it is difficult to understand, unless indeed the legislature are becoming suspicious of their utility." And so he proceeds in his abuse of this section, for nearly two pages and a half of his work; or, as a magis-

trate, in writing to Shaws' "*Justice of the Peace*," remarks, he has "poured out the vials of his wrath" upon it. And why? Simply because the legislature have not thought fit to compel justices to have the regularity of their proceedings judged of by the judges of the county courts, many of whom, although now justices themselves of the counties in which they act, do not profess to have any knowledge upon the subject. From the style of the gentleman's previous observations, I own I was not quite prepared to expect an objection to this section in its present shape; I imagined that he would have abused the legislature, *more suo*, for not excepting actions against justices from the jurisdiction of the county courts altogether; I thought that the judges of the county courts, being mostly justices of the peace for the counties in which they act, sitting often side by side at quarter sessions with the defendant, subject themselves to actions of the same kind,—would be indulged with a spice of the gentleman's peculiar eloquence, for not having themselves come forward, and disclaimed such jurisdiction, and got some section inserted for the purpose. But notwithstanding all this gentleman has said in his two pages and a half aforesaid, notwithstanding all he might have said, and all I expected that he would have said, I have every confidence in the honour and fairness of the judges of the county courts, that when such actions shall come before them, they will decide them without favour or affection to any; I have every confidence in the justices, that they will not object to the jurisdiction, in cases where their proceedings are really irregular; I have every confidence in the section itself, that it will work well and fairly for both parties, as the select committee who introduced it intended, notwithstanding the extraordinary abuse this gentleman so unceremoniously heaps upon it.

Tender, and
payment of
money into
court.

XI. And be it enacted, that in every such case after notice of action shall be so given as aforesaid, and before such action shall be commenced, such justice to whom such notice shall be given may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit, as amends for the injury complained of in such notice; and after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into court such sum of money as he may think fit, and which said tender and payment of money into court, or either of them, may afterwards be given in evidence by the

defendant at the trial under the general issue aforesaid ; and if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into court, or beyond the sums so tendered and paid into court, then they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue, if any, shall be paid to the plaintiff ; or if, where money is so paid into court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the court in which such action shall be brought an order that such money shall be paid out of court to him, and that the defendant shall pay him his costs to be taxed, and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause.

NOTE.

This is somewhat different from the former provisions on the same subject in stat. 24 G. 2, c. 24, s. 2. Formerly the tender must have been pleaded specially ; by this section it may be given in evidence under the general issue. Formerly where money was paid into court, the plaintiff was at liberty to take it out, although he continued the action ; but now the money must remain in court to abide the event of the action ; and if the jury find for the defendant, the money so paid into court shall be applied to the payment of his costs, in the first instance.

As there is no plea of payment of money into court required in such action, it is provided here that if the plaintiff elect to take the sum so paid in, in satisfaction of his damages, he may obtain an order to that effect from the judge, which order shall be a bar to any future action for the same cause. As to the costs to be taxed, they will be the usual costs, namely, the plaintiff's costs up to the time of the payment of the money into court, deducting therefrom the defendant's costs (if any) incurred subsequently to such payment.

It is objected (S.), that this clause is carelessly drawn, as it has reference only to actions in the superior courts, and not

to actions in the county court. This is a mistake ; the section has reference to both ; the defence of a tender before action brought, or a payment into court after action, are as familiar to the practice of one court as of the other.

I have now noticed all this gentleman's objections to the third of these Acts ; and I trust I have convinced the reader that there is not the slightest ground or pretence for any one of them.

In what cases non-suit, or verdict for defendant.

XII. And be it enacted, that if at the trial of any such action the plaintiff shall not prove that such action was brought within the time herein-before limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or (when such plaintiff shall sue in the county court,) within the district for which such court is holden, then and in every such case such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

NOTE.

These provisions are the same in substance as those formerly in force upon the same subject. *See 2 Arch. J. P.* 45, 46.

Damages.

XIII. And be it enacted, that in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of twopence as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with re-

spect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

NOTE.

The law was the same formerly, where the action was brought against the justice for having convicted the plaintiff, or for any act done by him in causing the penalty to be levied, or the plaintiff to be imprisoned, provided the action were brought after the conviction quashed. 43 G. 3, c. 141, s. 1. See *ante*, p. 193.

XIV. And be it enacted, that if the plaintiff in any **Costs.** such action shall recover a verdict, or the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs, in such manner as if this Act had not been passed; or if in such case it be stated in the declaration, or in the summons and particulars in the county court if he sue in that court, that the act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between attorney and client; and in every action against a justice of the peace for any thing done by him in the execution of his office, the defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between attorney and client.

NOTE.

There is some slight difference between these provisions as to costs, and those formerly in force on the same subject.

In actions of trespass the plaintiff will be entitled to his costs, if he recover, in the same manner as in ordinary cases, except under the circumstances stated in the next preceding section, in which case, although he recover, he is not entitled to costs. But in actions on the case, where it is alleged that the act complained of was done maliciously and without

reasonable and probable cause, he shall be entitled to his full costs, to be taxed as between attorney and client. Formerly in this latter case he was entitled to double costs; 24 G. 2, c. 44, s. 7; but double costs are now abolished in all cases.

The defendant, formerly, was entitled to double costs, if he obtained a verdict, or the plaintiff were nonsuit, &c. By this section, he is entitled to his full costs as between attorney and client.

Act to extend only to England, Wales, and Berwick.

XV. And be it enacted, that this Act shall extend only to *England and Wales*, and the town of *Berwick-upon-Tweed*.

Commencement of Act.

XVI. And be it enacted, that this Act shall commence and take effect on the second day of *October*, in the year of our Lord one thousand eight hundred and forty-eight.

Repeal of statutes

XVII. And be it enacted, that from and after the time this Act shall so commence and take effect as aforesaid, the following statutes and parts of statutes, except so far as they may repeal other statutes, shall be and shall be deemed and taken to be repealed; that is to say, so much of an Act of parliament made and passed in the seventh year of the reign of his Majesty King James the First, intituled "An Act for ease in pleading against troublesome and contentious suits prosecuted against justices of the peace, mayors, constables, and certain other his Majesty's officers, for the lawful execution of their office," as relates to actions against justices of the peace; and so much of an Act made and passed in the twenty-first year of the reign of his said Majesty King James the First, intituled "An Act to enlarge and make perpetual the Act made for ease in pleading against troublesome and contentious suits, prosecuted against justices of the peace, mayors, constables, and certain other his Majesty's officers, for the lawful execution of their office, made in the seventh year of his Majesty's most happy reign," as relates to actions against justices of the peace; and so much of an Act made and passed in the twenty-fourth year of the reign of his Majesty King George the Second, intituled "An Act for

7 Jac. 1, c. 5.

21 Jac. 1, c. 12, s. 5.

24 G. 2, c. 44, s. 1 to 2, and part of s. 8.

the rendering justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants," as relates to actions against justices of the peace; and a certain other Act made and passed in the forty-third year of the reign of His late Majesty King George the Third, intituled "An Act to render justices of the peace more safe in the execution of their duty;" and all other Act or Acts or parts of Acts which are inconsistent with the provisions of this Act; save and except so much of the said several Acts as repeal any other Acts or parts of Acts, and also except as to proceedings now pending, to which the same or any of them may be applicable.

XVIII. And be it enacted, that this Act shall apply for the protection of all persons for any thing done in the execution of their office, in all cases in which, by the provisions of any Act or Acts of parliament, the several statutes or parts of statutes herein-before mentioned and by this Act repealed would have been applicable if this Act had not passed.

Act to apply to persons protected by the repealed statutes.

XIX. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present sessions of parliament.

Act may be amended, &c. this session.



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12 & 13 VICTORIA, CAP 14.

*An Act to enable Overseers of the Poor and Surveyors
of the Highways to recover the Costs of distraining
for Rates.*
[11th May, 1849.]

SECTION I. WHEREAS provision is already made by 43 Eliz. c. 2.
5 & 6 W. 4,
c. 50.
law for the recovery of the sum or sums at which any
person is rated or assessed to the relief of the poor, or is
rated or assessed in any rate for the highways, in *Eng-
land* or *Wales*, by distress and sale of his goods and
chattels, and in default of such distress by commitment
to prison until the same shall be paid; but no provision
is made for levying the costs and expenses incurred by
the overseers of the poor or the surveyors of highways
in the recovery of the same respectively: be it therefore
enacted by the Queen's most excellent Majesty, by and
with the advice and consent of the lords spiritual and
temporal, and commons, in this present parliament
assembled, and by the authority of the same, that it
shall be lawful hereafter for all justices of the peace, if
in their discretion they shall so think fit, in any warrant
of distress they shall make and issue for the levying of
any sum or sums to which any person or persons is or
are now or may hereafter be rated or assessed in or by
any rate or assessment for the relief of the poor or for
the highways in *England* or *Wales*, or in or by any
other rate or assessment which by law now or hereafter
is or shall be directed to be enforced or recovered in the
same manner as a poor-rate, or in any warrant for the
levying of any arrears of the same, to order that a sum,
such as they may deem reasonable, for the costs and
expenses which such overseers or surveyors, or the per-
sons applying for such warrant, shall have incurred in
obtaining the same, shall also be levied of the goods and
chattels of the person or persons against whom such war-
rant shall be granted, together with the reasonable charges
of the taking, keeping, and selling of the said distress.

Where a
warrant of
distress is
granted for a
poor rate or
highway rate,
&c. the costs
of obtaining
it may also
be levied.

NOTE.

By stat. 43, El. c. 2, after authorizing the churchwardens and overseers of every parish to raise, by taxation of the inhabitants and occupiers in such competent sum as they should think fit, a convenient stock of flax, &c. to set the poor on work,—it was enacted by section 4, that such churchwardens and overseers might, by warrant of two justices, levy the said sums of money and all arrearages of every one who shall refuse to contribute accordingly as they shall be assessed, by distress and sale of the offender's goods; but no mention was made of the costs of such a proceeding. And as to the highway rate the highway Act, 5 & 6 W. 4, c. 50, s. 34, gave the surveyors of highways the same remedies for levying and recovering it, as overseers of the poor had by law for the recovery of any rate made for the relief of the poor. There are several other cases, also, in which Acts of parliament give expressly the same mode of levying contributions in the nature of rates, as overseers have in the case of a poor-rate.

In all these cases, it became a question whether the overseers, &c. could levy their costs, as well as the amount of the rate, by their distress warrant; for the costs often exceeded the amount of rate to be levied. It was clear that the stat. 43 El. c. 2, gave them no such power; for justices of the peace cannot grant costs to a party, or order them to be levied by distress, unless they are expressly authorized by statute to do so. It was attempted to levy the costs in these cases, under stat. 18 G. 3, c. 19, s. 1; but it was clear that the statute did not authorize it; it extended only to cases where justices had to adjudicate upon some complaint, whereas the justices, in granting a warrant of distress in these cases, have no authority to adjudicate upon the rateability of the party, or his liability to pay the rate. And these cases did not come within stat. 11 & 12 Vict. c. 43, *ante*, p. 95, for that Act extends only to cases where the justice is authorized to convict or make an order. It became necessary, therefore, to frame the present Act, to enable overseers, &c. to recover their costs in these cases, and to put the authority of the justices in this respect out of all doubt. By stat. 54 G. 3, c. 170, s. 12, if sufficient distress cannot be found in the parish or district for which a poor rate or highway rate is made, the warrant may be executed in any other parish within the same county; and if no sufficient distress be found within the same county, then the party's goods in any other county may be distrained, upon getting the warrant backed by a justice of such other county, which will be done on oath being made of the facts.

Imprison-
ment in
default of
distress.

II. And whereas by an Act passed in the forty-third year of the reign of Queen Elizabeth, intituled "An Act for the relief of the poor," it is amongst other things

enacted, that in default of distress for a poor-rate it shall ^{43 Eliz. c. 2.} be lawful for two justices of the peace to commit the party against whom the distress warrant shall have issued to the common gaol of the county, there to remain without bail or mainprize until payment: and whereas it is desirable to limit the time within which a person assessed to a poor rate, or any other of the rates or assessments aforesaid, may be imprisoned for nonpayment of the same: be it therefore enacted, that so much of the said recited Act as relates to the commitment of any person to the county gaol for nonpayment of any poor rate, or for default of distress whereon to levy the same, shall be and the same is hereby repealed; and every person now undergoing any such imprisonment under or by virtue of the said recited Act, shall be discharged from such imprisonment so soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums with which he or she is charged; and that hereafter, when to any warrant of distress for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment herein-before mentioned, it shall be returned by the constable or person having the execution of such warrant that he could find no goods or chattels, or no sufficient goods or chattels, whereon to levy such sum or sums, together with the costs of or occasioned by the levying of the same, it shall be lawful for any two or more justices of the peace before whom the same shall be returned, or for any two or more justices of the peace for the same county, riding, division, liberty, city, borough, or place, if in their discretion they shall so think fit, to issue their warrant of commitment against the person with relation to whom such return shall be so made as aforesaid, in the form (D.) in the schedule to this Act annexed, or in any form to the like effect, and thereby order such person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar months, unless the sum or sums therein mentioned shall be sooner paid; and every such warrant of commitment made or issued for default

So much of 43 Eliz. c. 2, as relates to commitments for nonpayment of rates, or for default of distress, repealed.

Power to order imprisonment not exceeding three months in default of distress.

Post, p. 223.

of distress as aforesaid shall be made as well for the non-payment of the costs and expenses so as aforesaid incurred in obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison, (the amount of such several costs, expenses, and charges being stated in such warrant of commitment), as for the nonpayment of the sum or sums alleged to be due for the said rates respectively.

NOTE.

According to the stat. 43 El. c. 2, if sufficient distress could not be found, the party was liable to be imprisoned until he paid the amount at which he was rated. This was deemed too severe; and therefore by this Act the imprisonment is limited to three months.

One warrant may be issued against several rate-payers;

but otherwise as to a commitment in default of distress.

III. And be it enacted, that for the saving of expense in the levying of any sum or sums for rate and costs as aforesaid, it shall be lawful to make and issue one warrant of distress against any number of persons neglecting or refusing to pay the same, in the form in the schedule to this Act annexed; but nothing herein shall be deemed or construed to authorize justices in like manner to grant or issue one warrant of commitment against several persons in default of distress as aforesaid.

NOTE.

This is a most desirable provision, and saves a vast deal of expense to the defaulters. It was frequently adopted in practice before this Act; but it was not warranted by any statute, and was in strictness irregular. The practice, however, though objectionable as the law then stood, seemed so desirable, the defaulters being usually poor persons, little able to bear the expenses of proceedings against them, that it was thought right to legalize it by the present Act. It was found impracticable, however, to extend a like provision to the commitment in default of distress.

To whom warrants of distress or commitment to be directed.

IV. And be it enacted, that the warrants aforesaid may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, or the surveyors of the highways respectively, and to the constable of the

parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

V. And be it enacted, that every summons to be issued against any person for nonpayment of any sum for which he or she is or shall be so rated or assessed as aforesaid, shall be directed to such person, and may be in the form (B.) in the schedule to this Act annexed, or in any form to the like effect; and the same may be served by any churchwarden or overseer of the poor, or surveyor of the highways, respectively, or constable or other person, to whom it shall be delivered for that purpose, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him or her at his or her last place of abode; and the person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of the said summons; and if, upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justices then present that such summons was duly served as aforesaid a reasonable time before the time so appointed for his or her appearance as aforesaid, it shall be lawful for such justices of the peace in their discretion, if they shall so think fit, to proceed *ex parte*, in the same manner to all intents and purposes as if such party had personally appeared before them in obedience to the said summons.

Summons,
and how
served;

Post, p. 219.

if not obeyed,
the justices
may proceed
ex parte.

NOTE.

Before this statute, it was necessary that the rate should have been demanded of the party, and a summons served upon him similar to that above-mentioned, before a distress warrant could legally be issued. *R. v. Benn and Church*, 6 T. R. 198. And the demand must have been of the exact sum legally due, and the distress must have been for that sum and no more. *Hurrell v. Wink*, 8 Taunt. 369. It was not

intended by this Act to make any alteration in the law in these respects; the previous demand, and the summons are still necessary; the above section was introduced, merely to declare the manner in which the summons is to be served, and the mode of proceeding *ex parte* in case the party summoned should not attend at the time appointed.

On payment
or tender of
rate and
costs pro-
ceedings to
cease.

VI. And be it enacted, that in all cases where any proceedings have been or shall hereafter be taken to compel payment of any sum for which any such person is or shall be so rated or assessed as aforesaid, if at any time before such person shall be committed to and lodged in prison for non-payment thereof, or for or by reason of its being returned to such warrant of distress as aforesaid that there are no goods or chattels of such person whereon the same may be levied as aforesaid, such person shall pay or tender to the churchwardens or overseers of the poor, or any of them, or to the surveyor of highways respectively, or other person authorized to collect or receive such rate, the sum so sought to be recovered, together with the amount of all costs and expenses up to that time incurred in the proceedings so taken to compel payment thereof as aforesaid, then and in every such case the person to whom such sum and costs shall be so paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken.

Costs already
recovered or
proceeded
for deemed
legal.

VII. And be it enacted, that in all cases where such costs and expenses as aforesaid shall have been paid and received, or any proceedings taken or imprisonment had for non-payment of the same, such payment and receipt, and such proceedings or imprisonment, shall be deemed legal to all intents and purposes, and no action or other proceeding shall be had or proceeded in for or in respect of the same.

NOTE.

This was introduced, in consequence of the doubt entertained of the legality of the proceedings for costs in these cases, previously to the present statute.

VIII. And whereas it may be convenient, and save expense and litigation, if forms to be used for the purpose of levying the sums aforesaid should be given: be it enacted, that the forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

Forms in
schedule
valid.

IX. And whereas it is desirable to limit the time within which a person assessed to a church-rate may be imprisoned for nonpayment of the same: be it enacted, that every person now undergoing any such imprisonment shall be discharged from such imprisonment so soon as he or she shall have been imprisoned three calendar months, or shall sooner pay the sum or sums with which he or she is charged; and that hereafter no person shall be imprisoned for the non-payment of any church-rate for any time exceeding three calendar months.

Imprison-
ment for
nonpayment
of church-
rate limited.

NOTE.

This clause was not in the bill originally; it was introduced, I believe, in the House of Commons. It cannot seemingly have reference to any proceedings at law for church rates; for the stat. 53 G. 3, c. 127, s. 7, and 54 G. 3, c. 170, s. 12, (which are the only statutes which give a summary remedy for church-rates before a justice of the peace,) direct the amount to be levied by distress, but they make no mention of a commitment in default of distress. Indeed, as the above statutes give power to justices to make an order for church-rates under £10, the proceeding may be deemed to be within stat. 11 & 12 Vict. c. 43, *ante*, p. 95; and by the 22nd section of that Act, in all cases where a statute assigns no punishment in default of distress, the party may be committed and imprisoned for a time not exceeding three calendar months, unless the amount be sooner paid. But as the period of imprisonment is the same in the above section, it should seem that it has no reference to the stat. 11 & 12 Vict. c. 43, s. 22, above-mentioned. As, however, churchwardens may proceed in the ecclesiastical court for non-payment of church-rates, and the decree of that court may be enforced by writ *de contumace capiendo*, it is likely the above section has reference to an imprisonment under that writ.

SCHEDULE.

(A. 1.)

*Complaint of the Overseers or Surveyors against
One Rate-payer.*

Be it remembered, that on the — day of — to wit. } in the year of our Lord — the [churchwardens and overseers of the poor, or the surveyors of the highways] of the parish of — in the county of — aforesaid, by C. D., one of the said [overseers or surveyors], complain to the undersigned, [one] of her Majesty's justices of the peace in and for the said [county], that A. B. of the said [parish], being a person duly rated and assessed to [the relief of the poor, or the maintenance of the highways] of the said parish, in and by a rate * made on the — day of — in the year — in the sum of —, hath not paid the same or any part thereof, but hath refused so to do: wherefore the said [churchwardens and overseers or surveyors], by C. D. aforesaid, pray that the said A. B. may be summoned to appear before two of her Majesty's justices of the peace, to show cause why he hath not paid and refuses to pay the said sum.

C. D.

Made and exhibited before me — }
at — in the county of — }
on this — day of — 18—. }
E. F.

* Or, in and by several rates made on — and on — in the several sums of — and of —.

(A. 2.)

Complaint against several rate-payers.

Be it remembered, that on the — day of — to wit. } in the year of our Lord — the [churchwardens and overseers of the poor, or the surveyors of the highways] of the parish of — in the [county] of — aforesaid, by C. D., one of the said [overseers or surveyors], complain to the undersigned [one] of her Majesty's justices of the peace in and for the said [county], that the several persons whose names are mentioned and set out in the schedule hereunder written, being persons duly rated and assessed to [the relief of the poor, or the maintenance of the highways] of the said

parish, in and by the rates in the said schedule mentioned, in certain sums set down opposite to their respective names in the said schedule, have not respectively paid the said sums or any part thereof, but have respectively refused so to do: wherefore the said [churchwardens and overseers, or surveyors], by C. D. aforesaid, pray that the said several persons may respectively be summoned to appear before two of her Majesty's justices of the peace, to show cause respectively why they have not paid and refuse to pay the said sums respectively.

Schedule.

Names of the Ratepayers.	Residence.	Under Rate dated the 18—.			Arrears due under Rate dated the 18—.			Total Sum due.		
		£	s.	d.	£	s.	d.	£	s.	d.
A. B. -	(here state it)	1	7	0	1	7	0	2	14	0
I. K. -	-	0	13	0	-	-	-	0	13	0
L. M. -	-	-	-	-	0	18	6	0	18	6
N. P. -	-	0	14	3	0	14	3	1	8	6

C. D.

Made and exhibited before me ———
 at ——— in the county of ———
 on this ——— day of ——— 18—. }
 E. F.

(B.)

Summons upon the Complaint.

To A. B. of ———.

Whereas complaint hath this day been made before the undersigned, [one] of her Majesty's justices of the peace in and for the [county] of ———, by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of ——— in the said [county], that you, being a person duly rated and assessed to [the relief of the poor, or the maintenance of the highways] of the said parish, in and by a rate made on the ——— day of ——— 18—, in the sum of ———, hath not paid the same or any part thereof, but hath refused so to do: these are therefore to command you, in her Majesty's name, to be and appear on ——— at ——— o'clock in the forenoon, at ——— before such two or more justices of the peace for the said [county] as may then be there, to show cause why you have not paid and refuse to pay the same, otherwise you shall be proceeded against by default as if you had appeared, and be dealt with according to law.

Given under my hand and seal, this — day of — in the year of our Lord — at — in the [county] aforesaid.
E. F.

Take notice, that you have already incurred the under-mentioned costs; viz. s. d.

Clerk to the justices - - - - -	-	-	-	-
Overseer [or surveyor], for obtaining the } summons - - - - -	-	-	-	-
Constable, for serving ditto - - - - -	-	-	-	1 0
Ditto, travelling expenses at three-pence } per mile - - - - -	-	-	-	-

TOTAL - - - - -

If the amount of these charges, together with the rate claimed, be paid to the overseer [or surveyor] before the day on which the summons is returnable, all further proceedings will be stopped.

(C. 1.)

Warrant of Distress against One Rate-payer.

To the overseers of the poor [or to the surveyors of the highways] of the parish of — in the [county] of — and to the constable of — and to all other peace officers in the said [county].

Whereas on — last past a complaint was made before E. F., one of her Majesty's justices of the peace in and for the [county] of —, by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of — in the said [county], that A. B., being a person duly rated and assessed to the relief of the poor [or to the maintenance of the highways] of the said parish in and by a rate made on — in the sum of —, had not paid the same or any part thereof, but had refused so to do; and now at this day, to wit, on — at —, the parties aforesaid appear before us, the undersigned, two of her Majesty's justices of the peace in and for the said county [or the said churchwardens and overseers, or surveyors, by C. D., one of the said overseers, or surveyors, appear before us, the undersigned, two of her Majesty's justices of the peace in and for the said county; but the said A. B., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said A. B. has been duly served with the summons in this behalf, which required him to be and appear here at this day before such

two or more justices of the peace as should now be here, to answer the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint, and it being now duly proved to us upon oath [in the presence and hearing of the said A. B.], that an assessment for the [relief of the poor, or the maintenance of the highways] of the said parish of — and for other purposes chargeable thereon according to law, dated the — was duly made, allowed, and published, and that the said A. B. is therein and thereby assessed at the sum of — aforesaid,* and that the said sum hath been duly demanded of the said A. B., but that he hath not paid, and hath refused and still refuses to pay the same; and the said A. B. now not showing to us any sufficient cause for not paying the same, these are therefore to command you in her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of [five] days after the making of such distress the said sum, and the sum of — for the costs incurred by the said [churchwardens and overseers, or surveyors] in obtaining this warrant, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale you retain the said sums of — and —, rendering the overplus, on demand, to the said A. B., the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

Given under our hands and seals, this — day of — in the year of our Lord — at — in the [county] aforesaid.

E. F.
G. H.

* "And that a certain other assessment for the relief," &c. to the asterisk, if there be arrears.

(C. 2.)

Warrant of Distress against several Rate-payers.

To the overseers of the poor or the surveyors of the highways of the parish of — in the [county] of — and to the constables of — and to all other peace officers in the said [county].

Whereas on — last past a complaint was made before E. F., one of her Majesty's justices of the peace in and for the [county] of — by the [churchwardens and overseers of the poor, or the surveyors of the highways] of the parish of — in the said [county], that the several persons whose

names are mentioned and set forth in the schedule hereunder written, being persons duly rated and assessed to [the relief of the poor, or maintenance of the highways] of the said parish, in and by the rates in the schedule in that complaint and in this warrant underwritten, in certain sums set down opposite to their respective names in the said schedule, had not respectively paid the said sums or any part thereof, but had respectively refused so to do; and now at this day, to wit, on — at — the said [churchwardens and overseers, or surveyors] by C. D., one of the said overseers, or surveyors, and A. B., I. K., and L. M., some of the said parties in the said schedule mentioned, appear before us, the undersigned, two of her Majesty's justices of the peace in and for the said [county]; but the said N. P., although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said N. P. has been duly served with the summons in this behalf, which required him to be and appear here at this day before such two or more justices of the peace as should now be here to answer the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint against the said several parties, and it being now duly proved to us upon oath, in the presence of the parties so appearing as aforesaid, that an assessment for [the relief of the poor] of the said parish of — and for other purposes chargeable therein according to law, dated the —, was duly made, allowed, and published, and that the said several persons whose names are mentioned and set out in the schedule hereunder written are therein and thereby assessed at the sums set down opposite to their respective names in the said schedule, and that the said several sums have been duly demanded of them respectively, but they have not nor hath any of them paid the said sums or any of them, or any part thereof respectively, but they have refused and still do refuse to pay the same respectively, and have not, nor hath any of them, showed to us sufficient cause for not paying the same; these are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the several persons whose names are mentioned and set out in the schedule hereunder written; and if within the space of five days after the making of such distresses respectively the said several sums set opposite to their respective names at which they were so rated and assessed as aforesaid, and the said several sums for costs incurred by the said [churchwardens and overseers, or surveyors] also set opposite to their respective names, together with the reasonable charges of taking and keeping the said distress in each case, shall not be paid, that then you do sell the goods and chattels of the party so making default so by you distrained, and out of the money arising by such sales respectively you retain

the sums so set opposite to the name of each party whose goods you shall have so sold, rendering to him the overplus, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if in any of the cases mentioned in the schedule hereunder written no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

Schedule.

Names of Ratepayers.	Residence.	Under Rate dated 1849.	Arrears due under Rate dated 1848.	Costs.	Total.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.
A. B. -	(herestate it)	1 7 0	1 7 0	0 6 0	3 0 0
I. K. -	- -	0 13 0	- -	0 2 0	0 15 0
L. M. -	- -	- -	0 18 6	0 3 0	1 1 6
N. P. -	- -	0 14 3	0 14 3	0 5 0	1 13 6

Given under our hands and seals, this — day of —
in the year of our Lord — at — in the [county]
aforesaid.

E. F.

G. H.

(D.)

Warrant of Commitment in default of Distress.

To the overseers of the poor [or the surveyors of the highways] of the parish of — in the [county] of — and to the constable of — and to all other peace officers in the said [county], and to the keeper of the [house of correction] at — in the said [county].

Whereas on — last past a complaint was made before E. F., esquire, one of her Majesty's justices of the peace in and for the said [county] of —, by the [churchwardens and overseers of the poor, or surveyors of the highways] of the parish of — in the said [county], that A. B., being a person duly rated to the [relief of the poor, or maintenance of the highways] of the said parish, in and by a rate made on — in the sum of —, had not paid the same or any part thereof, but had refused so to do; and afterwards on — at — the parties aforesaid appeared before E. F. and G. H., Esquires, two of her Majesty's justices of the peace in and for the said county [or the said churchwardens and overseers, or surveyors, by C. D., one of the said overseers, or surveyors, appeared before E. F. and G. H., esquires, two of her Majesty's justices of the peace in and

for the said county; but the said A. B., although duly called, did not appear by himself, his counsel or attorney, and it was then satisfactorily proved to the said justices that the said A. B. had been duly served with the summons in that behalf, which required him to be and appear there at that day before such two or more justices of the peace as should then be there, to answer the said complaint, and to be further dealt with according to law; and then having heard the matter of the said complaint, and it being then duly proved to the said justices upon oath [in the presence and hearing of the said A. B.] that an assessment for the [relief of the poor, or the maintenance of the highways] of the said parish of — dated the — was duly made, allowed, and published, and that the said A. B. was therein and thereby assessed at the sum of — aforesaid, and that the said sum had been duly demanded of the said A. B., but that he had not paid, and had refused and still refused to pay the same, and the said A. B. then not showing to the said E. F. and G. H. any sufficient cause for not paying the same, the said justices thereupon then issued a warrant to — commanding them to levy the said sum of — and the sum of — for the costs incurred in obtaining that warrant, by distress and sale of the goods and chattels of the said A. B.: and whereas it now appears to me, the undersigned, one of her Majesty's justices of the peace in and for the said [county], as well by the return of the said — to the said warrant of distress as otherwise, that the said — hath made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sums above-mentioned could be found: These are therefore to command you the said [churchwardens and overseers, or surveyors] and constable and peace officers, or some or one of you to take the said A. B., and him safely to convey to the [house of correction] at — aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you, the said keeper of the said [house of correction], to receive the said A. B. into your custody in the said [house of correction] there to imprison him for the space of — unless the said sums of — and — together with the sum of — for the costs attending the said distress, and the further sum of — being the costs and charges of this commitment, and of taking and conveying the said A. B. to prison, making in the whole the sum of —, shall be sooner paid unto you the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of — in the year of our Lord — at — in the [county] aforesaid.
J. S. (L. S.)

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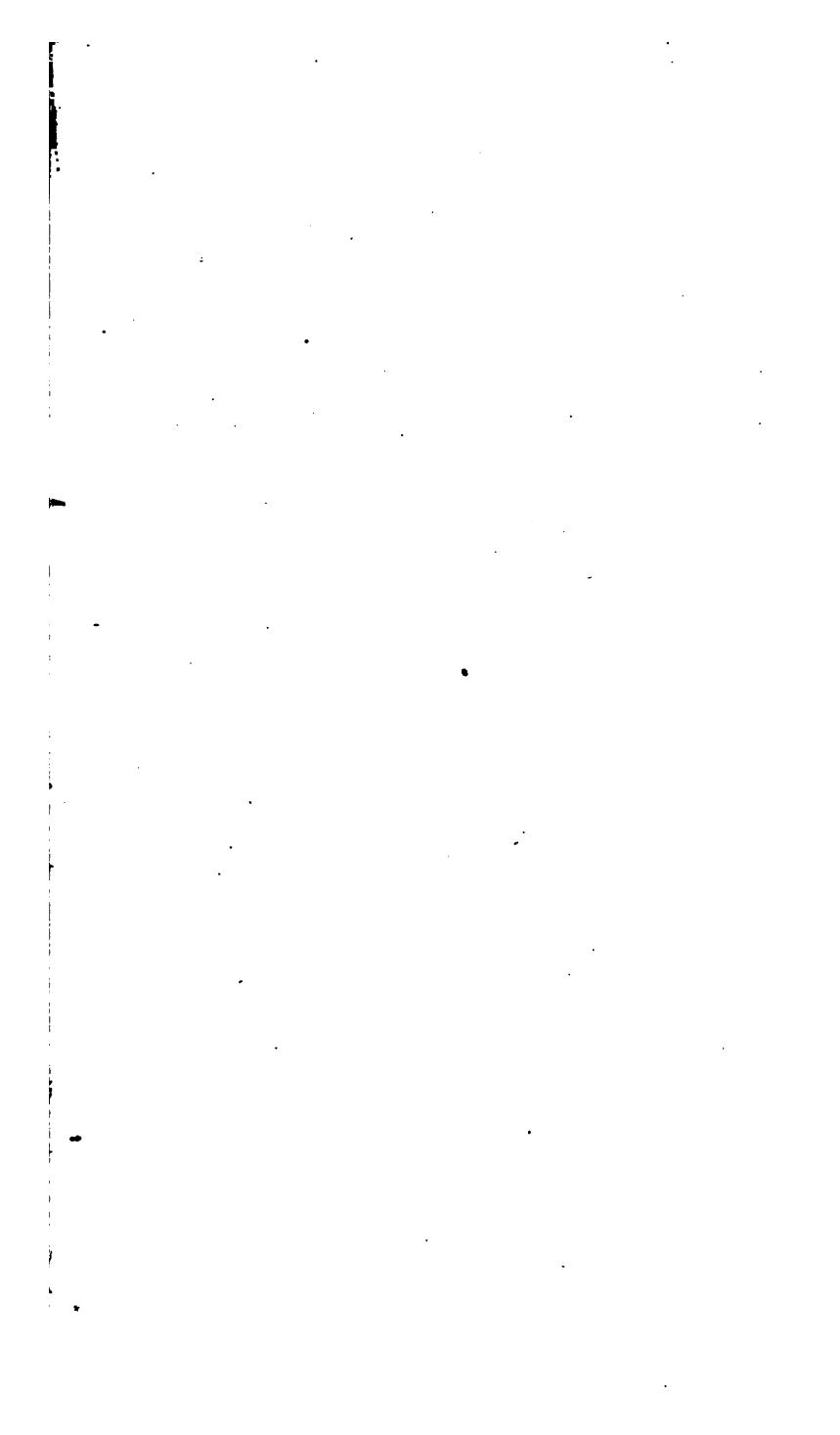
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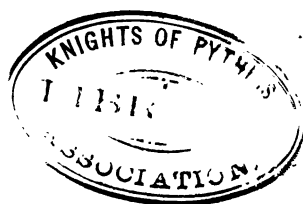
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- O. 2. Warrant of Commitment on an Order, in the first instance.
- P. 1. Warrant of Commitment on a Conviction, where the Punishment is by Imprisonment.
- P. 2. Warrant of Commitment, on an Order, where the disobeying of it is punishable by Imprisonment.
- P. 3. Warrant of Distress for Costs, upon a Conviction, where the offence is punishable by Imprisonment.
- P. 4. Warrant of Distress for Costs, upon an Order, where the disobeying of the Order is punishable with Imprisonment.
- P. 5. Warrant of Commitment for want of Distress for Costs upon an Order.
- P. 6. Warrant of Commitment for want of Distress for Costs upon a Conviction.
- Q. 1. Warrant of Distress for Costs, upon an Order of Dismissal of an Information or Complaint.
- Q. 2. Warrant of Commitment for want of Distress upon an Order of Dismissal.
- R. Certificate of Clerk of the Peace that the Costs of an Appeal are not paid.
- S. 1. Warrant of Distress for Costs of an Appeal against a Conviction.
- S. 3. Warrant of Distress for Costs of an Appeal against an Order.
- S. 2. Warrant of Commitment for want of Distress for Costs of Appeal against an Order.
- S. 4. Warrant of Commitment for want of Distress for Costs of an Appeal against a Conviction.
- T. Account of Clerk of the Justices at Petty Sessions, and the Keeper of the Gaol or House of Correction.
- T. a. Ditto, ditto. *In Books of 1, 2, and 3 quires, index-d.*
- V. Archbold's Minute Book of Convictions. *In Books of 100, 6s. 200, 10s. 6d. 300, 14s. 6d.*
- W Ditto, ditto. Orders, ditto, ditto.



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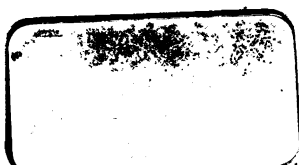
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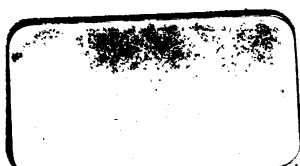
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